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SUPREME COURT OF THE UNITED STATES

No. ~~332.~~ 129.

THE

THE UNITED STATES, APPELLANTS,

vs.

LOUISE PAULINE LE GARDEUR DE REPENTIGNY, LIZETTE A
TOINETTE LE GARDEUR DE REPENTIGNY, GUY ROTT
THERESE EMILIE CLAVIE, ARISTIDE CLAVIE, MARIE CLORIN
CLAVIE, AND MARIE OCTAVIE CLAVIE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EA
ERN DISTRICT OF MICHIGAN.

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90	70
877	242
447	129

GOVERNMENT PRINTING OFFICE.

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LOUISE PAULINE LE GARDEUR DE REPENTIGNY, LIZETTE ANTOINETTE LE GARDEUR DE REPENTIGNY, GUY ROTTON, THERESE EMILIE CLAVIE, ARISTIDE CLAVIE, MARIE CLORINDE CLAVIE, AND MARIE OCTAVIE CLAVIE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

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1 *a* The United States of America to Louise Pauline le Gardeur de Repentigny, Lizette Antoinette le Gardeur de Repentigny, Guy Rotton, Therese Emilie Clavie, Aristide Clavie, Marie Clorinde Clavie, and Marie Octavie Clavie, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a claim and allowance of appeal filed in the clerk's office of the district court of the United States for the eastern district of Michigan, wherein the United States of America are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants as in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

1 *b* Witness the Honorable Noah H. Swayne, one of the justices of the Supreme Court of the United States this sixteenth day of August, in the year of our Lord one thousand eight hundred and sixty-four.

N. H. SWAYNE,
Associate Justice of the Supreme Court of the United States.

On this nineteenth day of August, in the year of our Lord one thousand eight hundred and sixty-four, personally appeared George C. Mahon, of Howard street, Detroit, before me, the subscriber, and makes oath that he delivered a true copy of the above-written citation to the Honorable Jacob M. Howard personally, at his office in Detroit aforesaid, the solicitor on record of the said appellees, and left the said copy with him, having first produced to him the above original citation and drawn his attention to the *the* direction for service endorsed hereon, and also on said copy so served as aforesaid; and that said service was so effected on the said nineteenth day of August, one thousand eight hundred and sixty-four.

GEORGE C. MAHON.

Sworn and subscribed before me this 19th day of August, 1864.

WM. D. ALLKINS,
U. S. Comm'r, east. dist. of Michigan.

Returned and filed in clerk's office, east'n dist. of Mich'n, Aug. 19, 1864.

JNO. WINDER, *Clerk.*
By WM. D. ALLKINS, *Dp. Cl'k.*

I do hereby order that the within citation be served on the appellees' solicitor of record, inasmuch as it appears that the said appellees are non-residents of the United States.

N. H. SWAYNE, *Asso. Just. S. C. U. S.*
EDWARD BATES, *Attorney General U. S.*
16 Aug., 1864.

Returned and filed in clerk's office east'n dist. of Mich'n, Aug. 19, 1864.

JOHN WINDER, *Clerk,*
By WM. D. WILKINS, *Dep. Cl'k.*

1 In the district court of the United States for the easte
Michigan.

1750

UNITED STATES OF AMERICA:

In the matter of the petition of Louise Pauline le Gardeur de
Lizette Antoinette le Gardeur de Repentigny, Guy Rotton,
Emilie Clavie, Aristide Clavie, Marie Clorinde Clavie, and M
Clavie, heirs of Josephine Lucrece le Gardeur de Repentigny, dame, petitioners and appellees, *vs.* the United States of America, respondents and appellants.

Petition for confirmation of alleged title of petitioners to certain lands at the Sault de Ste Marie, in the State of Michigan, under the private acts of Congress approved April 19, 1860, chap. XXXIV.

Pleas before the judge of the district court of the United States for the eastern district of Michigan, at Detroit, in said district, of the term of November, in the year of our Lord one thousand eight hundred and sixty-three.

EASTERN DISTRICT OF MICHIGAN, *ss:*

The petitioners aboved named put in their place Jacob M. Howard, esquire, as their attorney, against the United States of America in the matter of the petition aforesaid.

EASTERN DISTRICT OF MICHIGAN, *ss:*

The respondents, the United States of America, put in their place Alfred Russell, esq., U. S. district attorney, as their attorney at the suit of the said petitioners in the matter of the petition aforesaid.

Petition, filed January 9, 1861.

Withdrawn subsequently and amended petition filed in consequence of the deaths of parties.

Answer of the United States, filed 9th Ap'l, 1861.

Withdrawn subsequently and answer filed to amended petition.

3 *Petition amended in consequence of the death of parties, filed December 3rd,* 1861.

To the honorable the district court of the United States for the district of Michigan:

Humbly complaining, show unto this honorable court, your petitioners, Louise Pauline de Repentigny, Lisette Antoinette le Gardeur de Repentigny, widow of Pierre Murville Bonfils; Josephine Lucrece le Gardeur de Repentigny, widow of Cyprian Clavie, all of the island of Guadaloupe, in the West Indies, subjects of the emperor of the French, and Guy Rotton, now of Clifton, England, a subject of the queen of Great Britain, and a lieutenant colonel in her artillery, that in the year of our Lord one thousand seven hundred and fifty, Louis de Bonne and Louis le Gardeur de Repentigny, both subjects of the king of France, residing and domiciled in the then province or colony known as New France, at the present time as Canada, the former being a half-pay captain of infantry in the French army, and the latter an ensign in the military service of France, and bearing the title of Count and Chevalier de Repentigny, presented to the Marquis de la Jonquiere, then lieutenant governor of said New France, and Francois Bigot, then intendant of New France, having full power and authority in the premises from the crown of France, their petition for a grant or concession of land, situate and lying on the southern side of the river St. Marie, which connects the waters of Lake Superior with those of Lake Huron, and containing six leagues (French measure) in front on said river, by six leagues (same measure) in depth.

That on the eighteenth day of October, in the year aforesaid, the said Lieutenant General de la Jonquiere and the said Francois Bigot, the said intendant, by a formal written grant under their hands, acting in their official capacity, dated the day and year aforesaid, granted and conceded to said De Bonne and De Repentigny the said place called Sault Ste Marie, with six leagues front on said river by six leagues in depth, to be enjoyed

by the said De Bonne and the said De Repentigny, their heirs and assigns forever, in full tenure and jurisdiction, with the right of fishing and hunting within the limits of said concession, under the obligation of bearing faith and homage to the castle of St. Louis, in Quebec; of which said grant or concession, made in the French language, the following is a true copy, viz:

Du 18 Octobre, 1750.

Le Marquis de la Jonquiere, &c., Francois Bigot, &c.:

Vu la requeste a nous presentee par Messrs. De Bonne, capitaine reforme dans le regiment de Conde infanterie et le Chevalier de Repentigny, enseigne dans les troupes de ce pays, contenant que dans le dessein ou ils sont d'etablir une seigneurie ils ont jette les yeux sur l'endroit nomme le Sault Ste Marie; que des etablissements dans ce lieu seraient d'autant plus utiles que les voyaguers des postes voisins et ceux de la mer d'ouest y trouveraient une retraite assuree et par les soins et precautions que les supplians se proposent de prendre ils detruiroient dans ces quartiers le commerce des sauvages avec l'Anglais:—Pourquoi ils nous supplient de leur accorder la concession du dit Sault Ste Marie: avec six lieues de front sur le portage sur six lieues de profondeur, bordant la riviere qui separe les deux lacs.—A quoi ayant egard, nous, en vertu du pouvoir a nous conjointement donne par sa majeste, avons accorde et concede, accordons et concedons par ces precentes aux Srs. de Bonne et Chevalier de Repentigny le dit Sault Ste Marie, avec six lieues de front sur six lieues de profondeur, bordant la riviere qui separe les deux lacs. Pour en jouir par les dits Srs. de Bonne et Repentigny, leurs hoirs et ayants cause a perpetuite a titre de fief et seigneure, haute moyenne et basse justice, avec droit de peche et chasse, seutement dans toute l'etendue de la dite concession, a la charge de porter foi et homage au chateau St. Louis de Quebec; du quel ils releveront aux droits et redevances accoutumes suivant la coutume de Paris suivie en ce pays; de conserver et faire conserver par leurs tenanciers les boi de Chesne propes pour la construction des vaisseux du Roy; de donner avis a sa majeste des mines, minieres et mineraux si aucunes se trouvent dans l'etendue de la dite concession; que les appellations du juge qui y sera etabli sortiront en la justice royale de Montreal; d'y tenir feu et lieu, et le saire tenir par leurs tenanciers de deserter et faire deserter la dite terra; a faute de quoi, la presente concession sera et demeura nulle; laisser les chemins du Roy et autres juges necessaires pour l'utilite publique, et de fairie inserer parcilles conditions dans les concessions qu'ils feront a leurs tenanciers, aux cens rentes et redevances accoutumes par arpent de terre de front sur quarante de profondeur; laisser les greves libres a tous pecheurs a l'exception de celles dont ils auront besion pour leur peche, et en cas que sa majeste ait besion dans la suit d'aucune partie du dit terrain pour y faire construire des forts, batteries, place d'armes, magazins et autres ouvrages publics, sa majeste pourra les prendre aussi bien que les arbres necessaires pour les dits ouvrages et le bois de chauffage pour la garnison des forts, sans etre tenue a aucun dedommagement:—Reservons pareillement au nom de sa majeste la liberte de prendre sur la dite concession les bois de Chesne mature et generalement tous les bois qui seront propes pour la construction et armement de ses vasseaux, sans etre egalement tenue a aucune indemnite, le tout sous le bon plaisir de su majeste, de la quelle ils seront tenus de prendre confirmation des presentes dans l'an. En temoin de quoi, etc.

(Signed) LA JONQUIERE ET BIGOT.
(Contresigne et cachete) BIGOT.

A true and correct translation of which said grant and concession into the English language is as follows, to wit:

OF THE 18TH OF OCTOBER, 1750.

"The Marquis de la Jonquiere, etc., Francois Bigot, etc.:

"Having seen and examined the petition presented to us by Messrs. De Bonne, a half-pay captain in the Conde regiment of infantry, and the Chevalier de Repentigny, an ensign in the troops of this country, setting forth that, while entertaining the purpose of establishing a seigniory, they
4 have cast their eyes upon a place called (nomme) the Sault Ste Marie; that settlements in that place would be more useful as voyageurs from the neighboring posts and those from the western sea would there find a safe retreat, and, by the care and precautions which the petitioners propose to take, would destroy in those parts the trade of the Indians with the English; therefore, they petition us to grant and award to them the concession of the Sault Ste Marie, with six leagues of front upon the portage by six leagues in depth, bordering the river which separates the two lakes; whereto having regard, we, in virtue of the power given us, conjointly by his majesty, have awarded and conceded to the said Sieurs De Bonne and Chevalier Repentigny the said Sault Ste Marie, with six leagues of front by six leagues in depth, bordering the river which separates the two lakes. To be enjoyed by the said Sieurs De Bonne and Repentigny, their heirs and assigns in perpetuity, by title of fief and seigniory, (*a titre de fief and seigneurie,*) *haute moyenne et basse justice,* with the right of fishery and hunting only within the whole extent of the said concession, upon condition of bearing faith and homage at the castle of St. Louis of Quebec, of which they shall hold said lands upon the customary rights and services according to the *coutume de Paris* followed in this country; of preserving and causing to be preserved by their tenants the oak trees fit for constructing the king's ships; of notifying his majesty of any mines or minerals, if any shall be found within the said concession; that all appeals from the judge who shall reside there shall be to the royal court of Montreal; to hold and possess the same by themselves, and to cause the same to be held and possessed by their tenants, and to cause all others to desert and give up the said land. In default whereof, the present concession shall be and shall remain null. They shall also permit the king's roads and others judged necessary for the public utility, and cause to be inserted the like conditions in the concessions which they shall make to their tenants for quit-rents, rents, and the customary services by the arpent front of land by forty in depth; shall leave the shores free to all fishermen, with the exception of those which they shall have need of for their own fisheries; and in case his majesty shall hereafter have need of any part of the said land to erect thereon forts, batteries, arsenals, magazines, and other public works, his majesty may take it, as well as the trees necessary for the said works, and fire-wood for the garrison of the fort, without being held to any indemnity; and we reserve also, in the name of his majesty, the liberty of taking upon the said concession the oak timber spars, and, generally, all the wood which shall be proper for the construction and armament of his ships, without being held to any indemnity, all at the good pleasure of his majesty, whose confirmation of these presents they shall be bound to procure within the year.

"(Signed) LA JONQUIERE ET BIGOT.
"(Countersigned and sealed) BIGOT."

Which said original concession in the French language was duly sent as required by the laws of France, and of said province of New France, registered in a book at said Quebec, entitled *Registre d'Intendance Concess en*

Fief, at folio 69, soon after the same was issued, and within one year from the date thereof, as your petitioners are credibly informed and believe, and charge to be true; a true copy of which concession from said book, duly authenticated by the proper officers of the province of Canada, is now in the possession of your petitioners, and ready to be produced and proved as this honorable court shall direct; and to which, when produced, your petitioners pray leave to refer for greater certainty.

And your petitioners further show to your honor that the said Sieurs De Bonne and De Repentigny, within one year from the signing and issuing the said concession as aforesaid, caused and procured the same to be ratified and confirmed by his majesty, Louis XV, then king of France, in due form of law, and that on the twenty-fourth day of June, in the year of our Lord one thousand seven hundred and fifty-one, the said king of France caused to be issued, signed by his own hand, a letter patent or warrant of royal confirmation to the said De Bonne and De Repentigny, fully ratifying and confirming the said concession to them, their heirs and assigns forever; the original of which royal patent of confirmation is now in the possession of your petitioners ready to be produced and proved as this honorable court shall direct, and to which, when produced, your petitioners pray leave to refer for greater certainty; and which is in the French language in the words and figures following, to wit:

Brevet de ratification de concession pour les Sieurs de Bonne et Repentigny:

Adjourd'hui, vingt-quatre Juin mil sept-cent-cinquante-un Le Roy etant a Versailles voulant confirmer et ratifier une concession faite le dix-huit Octobre mil sept-cent-cinquante par les Srs. Marquis de la Jonquiere, gouverneur lieutenant general en la Nouvelle France, et Bigot, intendant au dit pays aux Srs. de Bonne, capitaine reforme dans le regiment de Conde infanterie, et Chev. de Repentigny, enseigne dans les troupes de Canada, du lieu nomme le Sault Ste Marie avec six lieues de front sur le portage, sur six lieues de profondeur, bordant la raviere qui separe les deux lacs, sa majeste a ratifie et confirme la ditte concession. Veut en consequence que les dits Srs. de Bonne et Repentigny leurs heritiers ou ayant cause jouissent a perpetuite comme de leurs propes de la dite terre a titre de fief et seigneurie avec haute, moyenne et basse justice avec droit de chasse et peche seulement dans toute l'etendue de la dite concession, suivant et conformement a celle qui leur en a ete faite, sans que pour raison de ce ils soient tenus de payer a sa majeste ni a ses Successeurs Rois aucune finance ni indemnite desquelles a quelques sommes quelles puissent monter sa majeste leur a fait don et remise; a la charge de porter foi et hommage au chateau de St. Louis de Quebec du quel le dit fief relevera et des autres redevances portes par la coutume de Paris suivie au dit pays, et que les appellations du juge qui y sera etabli ressortiront en la jurisdiction de Montreal a la charge aussi de conserver et faire conserver par leurs tenanciers les bois de Chesne propres pour la construction des vaisseaux de sa majeste, et de donner avis a sa majeste ou aux gouverneur et intendant du pays des mines, mineieres ou mineraux, si aucuns se trouvent dans la ditte concession, de la mettre en valeur et d'y faire tenir feu et lieu par leurs tenanciers, faute de quoi elle sera reunie au domaine de sa majeste, de taisser libres les chemins necessaires pour l'utilite publique, de lasser aussi les greves libres a tous pecheurs a l'exception de celles dont les dits Sieurs de Bonne et Repentigny auront besion pour leur peche, et en cas que dans la suite sa majeste eut besion de'aucune partie du dit terrain pour y faire construire des forts, batteries, places d'armes, magazins et autres ouvrages publics, elle pourra les prendre aussi bien que les arbres qui seront necessaires pour les dits ouvrages publics et les bois de chauffage pour la

garnison des dits forts, sans etre tenue d'aucun dedammagement, voulant sa majeste que la dite concession soit sujette aux conditions cy-dessus expliques sans aucune exception sous pretexte qu'elles n'aurait pas ete stipule dans la ditte concession et pour temoignage de sa volonte, sa majeste m'a ordonne d'expedier le present brevet qui sera enregistre au greffe du conseil superieur de Quebec et qu'elle a voulu signer de sa main ei etre contresigne par moi son conseiller secretaire d'etat et de ses commandements et finances.

(Signed) LOUIS.
" BOUILLE.

Which said original letter patent or warrant of confirmation was transmitted to the proper authorities at Quebec, and was, on the eleventh day of August, A. D. 1766, duly and legally registered in a book of registration there kept under the authority of Great Britain, on the day and year aforesaid; as certified on said original letter patent, to which certificate your petitioners pray leave for greater certainty to refer:

A true and correct translation of which patent of confirmation in the English language is as follows, to wit:

Brevet of ratification of a concession for Messrs. De Bonne and Repentigny.

On this day, the twenty-fourth of June, seventeen hundred and fifty-one, the king being at Versailles, wishing to confirm and ratify a concession made the eighteenth day of October, one thousand seven hundred and fifty, by Sieurs the Marquis de la Jonquiere, lieutenant governor general of New France, and Bigot, intendant of said country, to the Sieurs de Bonne, half-pay captain in the Conde regiment of infantry and the Chevalier de Repentigny, an ensign in the Canada troops, of the place called the Sault Ste Marie, with six leagues of front upon the portage by six leagues in depth bordering the river which separates the two lakes, his majesty has ratified and confirmed the said concession. He, in consequence, orders that the said Sieurs de Bonne and Repentigny, their heirs and assigns, shall enjoy, in perpetuity, as their own property, the said concession as a fief and seigniory, with high, middle, and low jurisdiction, with the right of hunting and fishing solely throughout the limits of said concession, according and in conformity to that which has been done for them; without their being bound, for this reason, to pay to his majesty or the kings, his successors, any sum of money therefor, or any indemnity; which sums of money or indemnities, to whatsoever sum they may amount, his majesty has made a gift of and released to them, on the condition that they shall bear fealty and homage to the castle of St. Louis, of Quebec, of and from which the said fief shall be held, as well as the other services required by the Coutume de Paris followed in that country, and that the appeals from the judge who shall be established there shall lie within the jurisdiction of Montreal; also, upon condition that they shall perserve and cause their tenants to preserve the oak timber proper for the construction of his majesty's ships, and inform his majesty or the governor and intendant of the country of the mines, minerals, and mineral resources, if any shall be found in said concession; that they improve said concession and use and occupy the same by their tenants; in default thereof the same shall be reunited to his majesty's domain; that they leave free the roads necessary for the public utility, leave also the shores free to all fishermen with the exception of those parts thereof which the said Sieurs de Bonne and Repentigny shall need for their own fishery; and, in case his majesty shall hereafter need any part of said land in order to construct there any forts, batteries, arsenals, magazines, and other public works, he may take also the trees which may be necessary for said public works,

and firewood for the garrison of such forts, without being held to any indemnity; his majesty ordering that the said concession shall be subject to the conditions above expressed, without any pretext that they should not have been stipulated in the said concession; and for a testimony of his will his majesty has ordered me to draw up this present decree (brevet) which is to be registered with the clerk of the superior council of Quebec, and which he has consented to sign with his own hand, and ordered to be countersigned by me his counsellor, secretary of state, and of his orders and his finances.

(Signed) LOUIS.
" BOUILLE.

And your petitioners further show that the said letter patent of said king of France was duly forwarded by the proper officers of that government to Quebec, and was there duly registered in the proper book soon after the same was so signed and issued, and some time during the year seventeen hundred and fifty-one, or soon thereafter; and that the record or registration thereof is still extant in the proper executive office at said Quebec, in the province of Canada.

And your petitioners further show that almost immediately after the granting of said letters patent to said De Bonne and De Repentigny, the war, commonly known as the French war, supervened between France and Great Britain, which did not terminate until the year 1762; that by the preliminary treaty of Fontainbleau of that year, and by the definitive treaty of
6 peace between the two governments of February 10th, 1763, the king of France renounced all his claims and pretensions to said New France, including Canada and what is now the State of Michigan; that by reason of the disorders which grew out of said war, the said concessees or grantees performed no act of fealty or homage, so far as your petitioners can learn, until after the peace and the transfer of the country from France to Great Britain; but that, as required by said concession and confirmation, Pierre Amable de Bonne, the only child, and the only heir-at-law of said Louis de Bonne, one of the original grantees in said letter patent, on behalf both of himself, as such heir-at-law, and of Louis Gaspard le Gardeur, then the sole child and heir-at-law of said Louis le Gardeur, Count de Repentigny, the original grantee, on the thirteenth day of February, in the year of our Lord 1781, appeared before the British governor of the province at Quebec, at the castle of St. Louis, (as required by said letter patent,) and then and there in due form of law did faith and homage to Frederick Haldimand, the British captain and governor general in chief of said province and its dependencies, in respect to said concession mentioned in said documents; which act of faith and homage so performed by the said Pierre Amable de Bonne was in law, as these petitioners believe and charge, a good and sufficient compliance with the requirements, in this behalf, of said letter patent and of the treaties between the two governments and the then laws of Canada, and enured to the benefit of both said grantees, their heirs and assigns: a true copy of the official certificate of which act of faith and homage, taken from the proper register thereof at Quebec, is hereto annexed, marked Exhibit I, a duly certified and authenticated copy thereof being in the possession of your petitioners, and ready to be produced, as this honorable court shall direct, and to which, when produced, they pray leave to refer for greater certainty.

And your petitioners further show that the said Louis le Gardeur, Count de Repentigny, one of the original grantees and concessees, was married at Quebec, on the 20th day of April, A. D. 1750, to Mademoiselle Marie Madeleine Chaussegros de Lery, by whom he had only one child, the said

Louis Gaspard le Gardeur, Count de Repentigny, born at Quebec, the 10th day of July, A. D. 1753, and who died at Pointe a Pitre, in the Island of Guadaloupe, on the second day of July, A. D. 1808. He was married on the 9th of December, A. D. 1780, to Magdeleine Pauline Margaret le Prevost Duquesnel, in said Guadaloupe, and had by her the following children only, viz:

1. Louis le Gardeur de Repentigny.

2. Theodore le Gardeur de Repentigny; both of whom died without children, the first-named on the 4th of May, A. D. 1820; the second on the 1st of July, A. D. 1811, and leaving them surviving.

3. Antoine Camille le Gardeur de Repentigny, their brother, born the 15th of July, 1789, the only surviving child of the above-mentioned Louis le Gardeur de Repentigny, one of said original grantees, and his sole heir-at-law.

That said Antoine Camille was lawfully married to Mademoiselle Marie Anne Toinette Nicolle Aimee de Gantheaume, at Guadaloupe, on the 19th of April, A. D. 1814; and died on the 1st day of April, A. D. 1820, leaving as his only children and heirs-at-law your petitioners Lisette Antoinette le Gardeur de Repentigny, then the wife of the above-named Pierre Charles Lucien Murville Bonfils; said Louise Pauline le Gardeur de Repentigny, who is unmarried; and Josephine Lucrece le Gardeur de Repentigny, then the wife of said Cyprian Clavie; the said Lisette, Louise Pauline and Josephine Lucrece, being the only lawful heirs and the direct lawful descendants of said Louis le Gardeur, Count of Repentigny, one of the two original grantees of said concession.

And your petitioners further show that the said Louis de Bonne, the other grantee, died at Quebec, or at some other place in Canada, some time before the 25th of July, A. D. 1763, leaving an only child and heir-at-law, to wit: the said Pierre Amable de Bonne, who was born in the province of Quebec, on the 25th of November, A. D. 1758, in lawful wedlock, his mother being La Dame Louise Prudhomme, who was married to said Louis de Bonne at some time before that period in said province.

That his said son Pierre Amable, as above stated, after having arrived at the age of his majority, rendered faith and homage for said concession.

That on the twelfth day of July, A. D. 1796, he, the said Pierre Amable, being then a judge of his majesty's court of king's bench, at Montreal, by a proper and lawful deed or instrument of conveyance, by him signed in due form of law, granted, conveyed, and transferred to one James Caldwell, of Albany, in the State of New York, his heirs and assigns forever, all his, the said Pierre Amable's, right, title, estate, and interest in all and singular the said lands and real estate mentioned in said concession and confirmation, to have and to hold the same to him, the said James Caldwell, his heirs and assigns, to his and their use forever, for the sum or price of fifteen hundred and seventy-seven pounds two shillings and three pence sterling; and then delivered said deed to said James Caldwell.

That on the eighteenth day of July, in the year of our Lord one thousand seven hundred and ninety-eight, the said James Caldwell, by a proper and lawful deed by him signed and sealed, granted and conveyed the same lands, rights, estate, and interests thus conveyed to him, to one Arthur Noble, then resident in the State of New York, for the sum of fifty thousand dollars, to have and to hold the same to him, the said Arthur Noble, his heirs and assigns, to his and their use forever; and then delivered said deed to said Arthur Noble, whereby said Noble became vested and seized of the undivided moiety of said concession in fee simple.

That said Arthur Noble died about the first day of May, A. D. 1814, leaving a last will and testament, wherein and whereby he gave and

devised to his nephew, John Slacke, all and singular his lands and real estate, situated and lying in the United States, including his said interest in the said concession; which said will is, as your petitioners are advised, in full force and efficacy in the State of Michigan at the present time, and whereby all said Arthur Noble's right, interest, and estate in said concession were lawfully and fully devised and transferred to his said nephew, the said John Slacke, of Dominick street, in the city of Dublin, Ireland.

That said John Slacke died some time after the date last aforesaid, in Ireland or England, leaving a last will and testament, duly executed, proved, and approved in Ireland, wherein and whereby he devised, granted, and transferred to Agnes Slacke, who was his wife, her heirs and assigns, forever, all his lands and real estate, situated in the United States, including all his interest in said concession, with power to convey the same to any one of his children.

That the said Agnes Slacke thus became and was the lawful owner in fee of the undivided moiety of said concession as tenant thereof in common with the said Lisette, Antoinette, Louise Pauline, and Josephine
8 Lucrece.

That the said Agnes Slacke, by a proper deed of conveyance and appointment, under her hand and seal, bearing date the fifth day of December, in the year of our Lord eighteen hundred and thirty-nine, executed in Ireland, and in accordance with the laws of Great Britain, granted, transferred, and conveyed the said undivided moiety of said fief or concession to her son, John Gray Slacke, of Castle Blayney, in the county of Monaghan, Ireland, who was a son of said John Slacke.

That the said John Gray Slacke, on the twenty-ninth day of March, A. D. 1841, in Ireland, made and published his last will and testament in writing, by him signed, and attested by witnesses as required by the laws of Great Britain and State of Michigan, and died thereafter, and during the same year eighteen hundred and forty-one; which said last will and testament by said John Gray Slacke was after said testator's death, and in December of the same year eighteen hundred and forty-one, duly proved and allowed in the prerogative court in said Ireland, and probate thereof duly granted as required by the laws of Great Britain to Louisa Maria Slacke, his widow; by which said last will and testament the said John Gray Slacke among other things devised and bequeathed unto one Henry Battersby, esquire, of Larkfield, in the county of West Meath, Ireland, his heirs, executors, and administrators, the undivided half part of the said concession or
9 fief, and all his, the said John Gray Slacke's, estate, right, and title therein, to hold unto the said Henry Battersby, his heirs, executors, and administrators, forever. Upon the trusts that when and if the said fiefs should be recovered or got into his or their possession, if said last-named testator's wife, the said Louisa Maria Slacke, should be then living, to sell the same and invest the produce thereof as mentioned in said will; and after the decease of the said Louisa Maria, whether the said fief should be then in the actual possession of the said Henry Battersby, his executors or administrators, or not, to assign and assure the said fief (or if sold the produce thereof) unto the son of the said testator's sister, Mrs. Rotton, who should be second in order of birth at the time of the decease of said Louisa Maria, upon the payment to the said Henry Battersby of all charges and expenses in recovering said fief—to which said last will of said John Gray Slacke or a copy thereof when produced your petitioners refer for greater certainty.

That one John Rotton, the father of your petitioner Guy Rotton, intermarried with one Anna Maria Slacke, a sister of said testator John Gray

Slacke in Ireland, on the fifteenth day of October, A. D. 1821; that the male children of the said marriage were first John Rotton, the younger, born on the twenty-seventh day of March, A. D. 1823, and the second
10 son of said marriage was your petitioner Guy Rotton, born on the twenty-second day of August, A. D. 1824.

That the said Louisa Maria Slacke, widow of said John Gray Slacke, died on or about the twenty-second day of July, A. D. 1848.

That at the time of her death the said fief or concession was not in the actual possession of said Henry Battersby, nor had the same been recovered or got into possession, or sold, or in any way disposed of, as was contemplated the same might be in said will of said John Gray Slacke; and that at the time of the death of said Louisa Maria Slacke, your petitioner the said Guy Rotton was the second son in the order of birth of the said Mrs. Rotton, the said sister of said John Gray Slacke, and as such entitled to have the said undivided half part of said fief or concession conveyed and assured to him as provided in the last-mentioned will.

That on the request of your petitioner Guy Rotton, and on his paying to said Henry Battersby as required by said last-mentioned will, the said Henry Battersby, by a deed of conveyance and assurance under his hand and seal in due form of law, bearing date the seventeenth day of May, A. D. 1861, executed in Ireland according to the laws thereof, and the laws of this district and the State of Michigan, granted, bargained, sold, aliened, released, conveyed, and confirmed unto your petitioner the said Guy
11 Rotton, and to his heirs and assigns, all the undivided moiety of said fief or concession, with all and singular the rights, members, privileges, advantages, and appurtenances thereunto belonging, in as full and ample manner as said John Gray Slacke was seized or possessed thereof.

And as evidence in support of their said claim your petitioners herewith present to the court—

1st. The said concession from the said lieut. governor and intendant of New France.

2nd. The said brevet of ratification or letter patent from the king of France.

3rd. The said instrument of conveyance from said Pierre Amable de Bonne to said James Caldwell.

4th. Said deed from said James Caldwell to said Arthur Noble.

5th. The said last will and testament of said Arthur Noble, or a duly authenticated copy thereof.

6th. The said last will and testament of said John Slacke, or a like copy thereof.

7th. The said deed of appointment from said Agnes Slacke to John Gray Slacke.

8th. The said last will and testament of said John Gray Slacke, or a like copy thereof.

9th. The said deed from said Henry Battersby to your petitioner Guy Rotton.

And also other documentary proofs to support the several aver-
12 ments herein contained touching the representative character of each of your petitioners and his or her rights in the premises.

13 That said Lisette Antoinette, Louise Pauline, and Josephine Lucrece, are the owners in common of the remaining undivided half part of said concession, as the heirs-at-law of the said Louis le Gardeur, Count de Repentigny; and that your petitioners are in law and equity entitled to have their claim, as such owners, to said concession allowed, confirmed, and ratified by the decree of this honorable court under and by virtue of the act of the Congress of the United States of 1860, hereinafter mentioned.

And your petitioners further show that they have been credibly informed and as they believe, the said Louis le Gardeur, Count de Repentigny, mentioned in said concession and letter patent, immediately on the granting of said concession of the 18th of October, A. D. 1750, actually entered into possession and enjoyment thereof; that some months before that time he was there as commandant of a French fort built and situated on the same spot where Fort Brady is now situated; that he remained there in command of said French fort until after the month of April, A. D. 1754; that during the years 1750, 1751, 1752, 1753, he, the said Repentigny, being in actual possession of said concession, caused a considerable amount of clearing to be done upon said concession, procured cattle from Illinois and kept them upon the same, and rented three leagues thereof to tenants until the year 1760, at the rate of 2,000 francs (livres tournois) a year, and occupied the same by himself and his tenants as required by the conditions of said concession, and continued to do so and to make improvements thereon until the transfer of the country by France to Great Britain by the treaty of the 3d of November, 1762, and the definitive treaty of peace of February 10th, 1763; but neither he nor the said Louis de Bonne (original grantees) ever sold or transferred their estate, right, and interest, or any part thereof, to any one; but that said Louis de Repentigny never became a subject of Great Britain, having continued his allegiance to France, and continued in the service of France for some time after the close of the war.

And your petitioners further show upon their information and belief that he, the said Louis le Gardeur, also rendered faith and homage for said concession, at said castle of St. Louis, as required by the terms thereof; and that no forfeiture for want of such faith and homage on the part of either of said grantees, their heirs or assigns, has ever accrued.

That by the articles of capitulation signed at Montreal on the 8th of September, 1760, by the Marquis de Vaudreuil, then governor general of Canada under the French crown, acting in behalf of France, and General Amherst, commander of the British forces in said province of New France, it was expressly stipulated and agreed, in article No. 37, "that the lords of manors, the military and civil officers, the Canadians, as well in the town as in the country; the French settled or trading in the whole extent of the colony of Canada, and all other persons whatsoever, shall preserve the entire peaceable property and possession of their goods, noble and ignoble, moveable and immovable, merchandises, furs, and other effects, even their ships; they shall not be touched nor the least damage done to them on any pretence whatever; they shall have the liberty to keep, let, or sell them as well to the French as to the British."

That by the second article of the preliminary treaty of peace between the kings of Great Britain, France, and Spain, signed at Fontainbleau, France, November 3, 1762, this right of private property in such French inhabitants of Canada was recognized, preserved, and guarantied to them by the government of Great Britain; and again by the definitive treaty of peace and friendship between Great Britain, France, and Spain, concluded at Paris, February 10, 1763.

That such right of private property was and is, by the laws of nations and the laws of war, also preserved and guarantied to the owners, even in the absence of any such treaty stipulation.

That the government of Great Britain and her courts of justice have ever recognized, enforced, and protected the rights, interests, and estates, whether real or personal, of the ancient French owners in Canada, maintaining them in the full enjoyment thereof, subject only to such remedies and such modifications as are prescribed by the common law of England and the statutes in force in Canada.

Your petitioners further show that by the treaty of peace between Great Britain and the United States, of September 3, 1783, the boundaries of the United States included and embraced the said concession; and that by the treaty of amity, commerce, and navigation between the said governments, of November 19, 1794, Art. IX, it was agreed that the British subjects
14 who then held lands in the territories of the United States, should continue to hold them according to the nature and tenure of their respective estates and titles therein, and might grant, sell, or devise the same to whom they pleased, in like manner as if they were natives; and that neither they nor their heirs or assigns should, so far as might respect the said lands and the legal remedies incident thereto, be regarded as aliens; which treaty, as well as the laws of nations, guards the rights of private property of all persons within the limits of the two governments and protects the title of your petitioners to the said concession.

And your petitioners further show that neither the said Louis de Bonne, nor the said Pierre Amable, his son and sole heir, nor the said James Caldwell, his assignee, nor the said Arthur Noble, the assignee of said Caldwell, nor said John Slacke, his devizee, nor the said Agnes Slacke, nor the said John Gray Slacke, nor the said Henry Battersby, nor your petitioner the said Guy Rotton, ever in any way or manner abandoned their claim and right to the one undivided half part of said concession, but have ever claimed and insisted upon the right thereto, and to have the same confirmed to them by the British and the American governments, and have never in any way consented to the occupancy of the same or of any part ther eof, by the United States or by any person or persons who may have settled thereon or taken possession of any part thereof, under the authority or permission of the United States, or as private individuals acting without such authority or permission; that all such occupancy, whether by the United States or private individuals, has been in violation of the manifest rights of said Louis de Bonne, his heirs and assigns, and totally without their acquiescence or consent; and that your petitioner, the said Guy Rotton, is now entitled in law and in equity to the full possession and enjoyment of all and singular the said concession and its appurtenances as tenant in common thereof with said other petitioners.

Your petitioners further show that neither the said Louis de Repentigny, one of said original grantees, nor any of his heirs-at-law, ever in any way or manner abandoned his or their claim and right to the other undivided half part of said concession, but that they have ever claimed and insisted upon their right thereto, and to have the same confirmed to them by the British and American governments, and have never in any way consented to the occupancy of the same or any other part thereof by the United States, or by any person or persons who may at any time have settled thereon or taken possession of any part thereof under the authority or permission of the United States, or as private individuals acting without such authority or permission; that all such occupancy, whether by the said United States or private individuals, has been in violation of their rights, and wholly without their acquiescence and consent; and that your petitioners, the said Louise Pauline, Lisette Antoinette, and Josephine de Repentigny, are now entitled in law and equity to the full possession and enjoyment of all and singular the said concession and appurtenances as tenants in common thereof with your petitioner Guy Rotton.

Your petitioners further show that when the said original grantees, about the year 1755, personally withdrew from said tract of land, they left their tenants and agents in possession thereof, who continued for many years, and whose heirs and representatives still remain in possession of some part thereof; and that your petitioners are entitled in law and equity to treat the

possession and occupancy of such tenants and agents and their representatives as their own, as against any claim of abandonment or prescription.

They further show that owing to the non-residence in the United States of the said Arthur Noble, (he being a subject of Great Britain and residing in England from the time of his said purchase from James Caldwell, 1798, to the time of his death, 1814 or 1815,) and the non residence in the United States of said John Slacke, (the latter residing in Ireland, and being a British subject from the time of said Noble's death to that of his own death, 1820 or 1821,) and the said Agnes Slacke being during her whole life a subject and a resident of Great Britain, no one of them ever knew of the existence of the acts of Congress of March 26, 1804, entitled "An act making provisions for the disposal of the public lands in the Indian territory, and for other purposes," or of the subsequent act of Congress of April 25, 1808, entitled "An act supplemental to an act regulating the grants of land in the Territory of Michigan," nor of any other act of Congress under which their said claim could have been heard and determined.

And they further show that the said Louis de Repentigny, the other grantee, and his heirs-at-law, including your petitioners the said Louise Pauline, Lisette Antoinette, and Josephine de Repentigny, and each and every of them, have been from the time of the close of said French war, non-residents of the United States, subjects of France, and equally without any knowledge of the said act of Congress; that they and each of them have from the first relied implicitly upon the faith of the said treaties, and upon the justice of the government of the United States to protect their rights and shield them from wrong.

And your three last-named petitioners further show that owing to their helplessness and the helplessness of their ancestors in respect to pecuniary means, they have been utterly unable to come to the United States and assert their rights, but have been obliged to remain absent and to trust to such exertions as their friends have from time to time voluntarily made in their behalf to recover said lands.

Your petitioners further show that as early as the 7th of December, 1826, the then owners of said concession caused to be entered and recorded in the general land office of the United States, at Washington, a caveat or protest, cautioning the United States against and forbidding them from selling or disposing of said concession or any part thereof, and setting forth the title thereto.

They further show that they, their ancestors or assignors, have from time time, from the year 1824, and as they charge, upon belief, long before that time, brought their said claim to the attention of the government of the United States or of its proper departments, and claimed and insisted upon its recognition and allowance, and that almost from year to year, especially from the year 1841, the said claim has been called to the attention of Congress by memorials or other proper proceeding, having in view the confirmation thereof by Congress, till at length in the year 1860, Congress passed an act entitled "An act authorizing the courts to adjudicate the claim of the legal representatives of the Sieur de Bonne, and of the Chevalier de Repentigny, to certain lands at the Sault Ste Marie in the State of Michigan," which having been duly passed by both houses of Congress, was approved by the President of the United States on the 19th of April, A. D. 1860,
15 and to which your petitioners refer as the foundation and authority for filing this present petition, and as giving to this honorable court jurisdiction in the premises.

And your petitioners further show that by the 2d section of said last-mentioned act it is provided that "in case of a final decree in favor of the validity of the grant, it shall not be construed to affect or in any way impair any

adverse sales, claims, or other rights which have been recognized by the United States within the limits of the said claim, or which under any law of the United States may have heretofore been brought to the notice of the land commissioners or of the land officers in Michigan, or any of the land granted to the State of Michigan or occupied by it for the Sault Ste Marie Canal, its tow-path or appurtenances; but for the area of any such adverse claims the legal representatives of the said De Bonne and Repentigny shall receive from the Commissioner of the General Land Office warrants authorizing them or their assigns to enter any other lands belonging to the United States and subject to entry at private sale at one dollar and twenty-five cents per acre; which warrants shall be for sections or legal subdivisions of sections, at the option of the parties entitled to receive them."

And your petitioners further show that as they are credibly informed and believe, the most, if not the whole of said tract of land has in some manner been granted and disposed of by the United States, either by their recognition of claims and rights of individuals thereto, or grants legislative or otherwise, whereby the whole or the most of said tract has been disposed of, so far as the United States are concerned; and your petitioners are ignorant of, and therefore deny the existence of any adverse claims, except such as are specially excepted out of the operation of the said act of Congress, under the second section thereof, which specially excepted claims. Your petitioners are willing to respect and to receive therefor land warrants as provided in said second section. And your petitioners further show that by reason of the great lapse of time, the exact boundaries of said fief as granted have become uncertain, and that it is necessary that by a proper order this honorable court should cause them to be correctly defined and surveyed.

To the end, therefore, that the United States, who are required to make defence by the district attorney of this district, may appear in this honorable court and true answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated; that this honorable court may inquire into the validity of the title of said De Bonne and De Repentigny, and of your petitioners, to said concession, and decide thereon, under the laws of nations, the laws, usages, and customs of the country from which the same was derived, and the treaties and laws of the United States, and make and pass a decree ratifying and confirming and declaring valid in law and equity the title of said original grantees, De Bonne and Repentigny, and decreeing the title of said concession to be in your petitioners in fee simple as tenants in common, the one undivided half or moiety thereof to your petitioners the said Lisette Antoinette le Gardeur de Repentigny, widow of Pierre Charles Lucien Murille Bonfils, Louise Pauline le Gardeur de Repentigny, and Josephine Lucrece le Gardeur de Repentigny, widow of Cyprian Clavie, of said Guadaloupe, and the remaining undivided half or moiety thereof to your petitioner Guy Rotton; and decreeing and declaring that the United States have no right, title, estate, or interest in said concession as against your petitioners, and ordering and directing that your petitioners be let into immediate possession and enjoyment thereof, or of such parts thereof, if any, as remain undisposed of; and that they may have such other or such further relief in the premises as shall be agreeable to equity and good conscience and the laws of the United States.

May it please this honorable court, the premises considered, to grant unto your petitioners a proper writ of subpœna, to be directed to the said United States of America, (to be served upon said district attorney,) commanding them by a certain day to be and appear in this honorable court and
16 then and there to make answer to all and singular the matters herein contained, and to stand to and abide such order and decree as this honorable court may make herein; or that an order be made directing a

citation to issue to said district attorney, with a copy of this petition as this court shall be advised.

And your petitioners will ever pray, &c.

(Signed) J. M. HOWARD, *Sol. for Petitioners.*

17 EXHIBIT I.

District of Montreal: Pierre Amable de Bonne, ecuyer, Sieur de Missegle, seigneur et proprietarie de la moitie du fief et seigneurie du Sault-St. Marie. Du treize de Fevrier, 1781.

En procedant a la confection du papier terrier du domaine du roi en la province de Quebec, est comparu au chateau St. Louis en la ville de Quebec par devant nous Frederic Haldimand, capitaine et general gouverneur en chef de la province de Quebec, territoire independant en Amerique, vice admiral et garde du grand sceau d'icelle province et frontieres, &c., &c., &c. Le Sieur Pierre Amable de Bonne, ecuyer, Sieur de Missele, seigneur et proprietaire de trois lienes de terre de front sur six lieues de profondeur, a l'endroit nomme le Sault St. Marie, cy apres explique, lequel sieur comparant nous a dit q'uil vient par devant nous pour rendre et porter au roi, au chateau St. Louis de Quebec la foi et hommage lige qu'il est tenu de rendre et porter a sa tres excellente Majeste George trois a cause du dit fief et seigneurie, et nous a represente pour titre de sa propriete une concession donnee et accordee par le Marquis de la Jonquiere et Francois Bigot, cy devant gouverneur general et intendant en ce pays en date du dix-huit Octobre, 1750, a Messieurs de Bonne, capitaine reforme dans le regiment de Conde, et le Chevalier de Repentigny, enseigne dans les troupes de ce pays, l'endroit nomme te Sault Ste Marie avec six lieues de front sur le portage sur six lieues de profondeur bordant la riviere qui separe les deux lacs: Pour en jouir par les dits Sieurs de Bonne et de Repentigny, leurs hoirs et ayant cause a perpetuite, a titre de fief et seigneurie, haute mayenne et basse justice avec droits de peche et de chasse seulement dans toute l'etendue de la dite concession a la charge de porter foi et hommage au chateau St Louis de Quebec du quel ils releveront, aux droits et redevances accoutumes suivant la coutume; de conserver et faire conserver par leurs tenanciers les bois de chesne propres pour la construction des vaisseaux du roi; de donner avis a sa majeste des mines, minieres, et mineraux, si aucuns se trouvent dans l'etendue de la ditte concession; que les appetlations du juge qui deserter et faire deserter la dite terre, faute de quoi la presente concession sera et demeurera nulle; laisser libres les chemins du roi et autres juges necessaires pour l'utilite publique et de faire inserer pareilles conditions dans les concessions qu'ils feront a leurs tenanciers aux cens, rentes et redevances accoutumes par arpent de terre de front sur quarante de profondeur; laisser les greves libres a tout pechenr a l'exception de celles dont ils auront besoin pour leur peche: en cas que sa majeste ait besoin dans la suite d'aucune partie du dit terrain pour y faire construire des fortes, batteries, places, armes magazins et autres ouvrages publics, sa majeste purra les prendre anssi bien que les arbres necessaires pour les dites ouvrages, et le bois de chauffage pour la garnison des forts, sans etre tenue a aucun dedommagement, reservant pareillement au nom de sa majeste la liberte de prendre sur la dite concession les bois de chesne mature et generalment tous les bois qui seront propes a la construction et armament de ses vaisseaux sans etre egalement tenue a aucune indemite, le tout sous le bon plaisir de sa majeste. Dont la moitie de la dite seugnerie du Sault Ste Marie cy dessus disignee, appartenant au dit Sieur comparant par succession du dit feu Sieur Louis de Bonne ecuyer, son pere comme son fils unique et seul heritier, etant un des propres, qu'il nous plaise le recevoir a la foi et hommage lige de la dite moitie du dit fief et seigneurie

relevant en plein fief de sa majeste et a l'instant s'etant mis en devoir de vassal tete nue, sans epee et eperons et un genouil en terre aurait dit a haute et intelligible voix qu'il rendait et portait entre nos mains la foi et hommage qu'il est tenu de rendre et porter au Roi au chateau St. Louis de Quebec a cause du dit fief et seigneurie; et la quell foi et hommage nous l'avons recu et recevons par ces presentes, sauf les droits du Roi, en autres choses et de l'autrui en toutes; et le dit comparant a fait et souerit nos mains le serment de bien et fidelement servir sa majeste, et de nous avertir et nos successeurs s'il apprend qu'il se fasse quelque chose contre son service; et le dit comparant s'est oblige de fournir son aveu et denombrement dans le tems prescrit par les loix, coutumes et usages de cette province dont et du tout il nous a requis acte, que nous lui avons accorde et a le dit comparant signe avec nous.

Nous suspendons la dite foi et hommage jusqu a ce que le comparant nous ait represente sa ratification de la dite seigneurie, ou plus amplement informe.

(Signe) FRED. HALDIMAN.

Par odre de son Excellence.

(Signe) J. L. LUGNEL, *G. P. T.*

Je certifie que l'ecrit ci dessus et des autres parts est conforme a l'original depose en mon bureau.

Quebec le 16 Octobre, 1827.

LOUIS PLANUNDER, *Greffier de papir terrier.*

Translation of Exhibit I.

District of Montreal: Pierre Amable de Bonne, Sieur de Missiegle, lord and proprietor of one half of the fief and seigniory of the Sault Ste Marie, on the thirteenth of February, 1787.

While proceeding to complete the public land register of the royal domain in the province of Quebec, then presented himself at the chateau of St. Louis, in the city of Quebec, before us, Frederick Haldimand, captain and governor general in chief of the province of Quebec, territories and dependencies in America, vice admiral and keeper of the great seal of said province, &c., &c., &c. Mr. Pierre Amable de Bonne, Sieur de Missiegle, lord and proprietor of three leagues front of land by six leagues in depth at the place called the Sault Ste Marie, hereinafter explained, who, in our presence declared that he comes before us, in order to render and profess to the king, at the chateau of
18 St. Louis of Quebec, his liege fealty and homage which he is bound to render and profess to his most excellent majesty George III, on account of the fief and seigniory, and he presented to us as his title and evidence of property, a grant made and conceded by the Marquis de la Jonquiere and Francois Bigot, heretofore governor general and intendant in this country, dated the 18th of October, 1750, to Messrs. De Bonne, half-pay captain in the regiment of Conde, and the Chevalier de Repentigny, ensign in the troops of this country, the place called the Sault Ste Marie, with six leagues front on the portage, by six leagues in depth, running along the river which separates the two lakes, to be by them, the said De Bonne and De Repentigny holden and enjoyed, as well as by their heirs and representatives in perpetuity as a fief and seigniory, high, middle, and low justice and jurisdiction, with the right of fishing and hunting only over the whole extent of the said grant, under the charge and condition to do fealty and homage at the chateau of St. Louis, subject to the usual rights and dues according to the custom; to preserve and cause to be preserved by their tenants the oak timber proper for the construction of royal ships; to give information to his majesty of any mines, quarries, and minerals, if any should be found within

the limits of said grant; that appeals from the judge who may be established therein shall be taken up to the royal court at Montreal; to keep fire and place and cause the same to be kept by their tenants; to clear and cause the same to be cleared by their tenants, in default whereof the present grant shall be and remain null; to leave the royal roads and others which may be judged necessary for public utility, and to cause the same conditions to be inserted in the grants which they may make to their tenants on the usual rent and due per arpent front by forty in depth; to leave the open beach free to all fishermen, except what they shall need for their own fishing. And in case his majesty should need hereafter any part of said land for the construction thereon of forts, batteries, arsenals, magazines, and other public works, and firewood for the garrison of the forts, without being bound to pay any indemnity; reserving also in the name of his majesty the right to take on said grant the oak timber, spars, and generally all kind of timbers which may be proper for the construction and armament of his vessels, without being bound to pay any indemnity, the whole at the discretion of his majesty. Thereof one half of said signiory of the Sault Ste Marie, above described, belonging to the said party here present by inheritance from the said Louis de Bonne, his father, as his only son and heir, being one capable, that it would please us to accept and receive him in fealty and homage for the half of said fief and seigniory, holding in full fief from his majesty, and thereupon immediately placing himself as a vassal, uncovered without sword and spurs, and his knee on the ground, he proclaimed in a loud and audible voice that he did fealty and homage, as he was bound to do, to the king at the chateau of St. Louis of Quebec, for the said fief and seigionry; to which profession of fealty and homage we have received, and do by these presents receive him, saving the rights of the king in other, and of other persons in all; and the said party has made and subscribed the oath well and faithfully to serve his majesty, and to notify us and our successors if he learns that anything should be attempted against his service; and the said party bound himself to furnish us his confession and enumeration within the time prescribed by the laws, customs, and usages of this province, of all which he required us to furnish him a certificate which we have herein granted him, and the said party has signed with us.

We suspend the said fealty and homage until the aforesaid party shall have presented to us the ratification of his said seigniory or more fully informed.

(Signed) FRED. HALDIMAND.

By order of his excellency,

(Signed) J. L. LUGUET, *G. P. T.*

I certify that the above writing, and on the other pages is conformed to the original, deposited in my office.

LOUIS PLANUNDAR,
Register Clerk of Public Land.

Quebec, October 16th, 1827.

19 *Answer to amended petition, filed 17th Dec'r*, 1861.

In the district court of the United States for the district of Michigan.

The answer of Alfred Russell, the acting attorney of the United States for said district of Michigan, for and in behalf of the United States, to the amended petition of Louise Pauline de Repentigny, Lisette Antoinette le Gardeur de Repentigny, widow of Pierre Murville Bonfils, Josephine Lucrece le Gardeur de Repentigny, widow of Cyprian Clavie, and Guy Rotton, petitioners:

relevant en plein fief de sa majeste et a l'instant s'etant mis en devoir de vassal tete nue, sans epee et eperons et un genouil en terre aurait dit a haute et intelligible voix qu'il rendait et portait entre nos mains la foi et hommage qu'il est tenu de rendre et porter au Roi au chateau St. Louis de Quebec a cause du dit fief et seigneurie; et la quell foi et hommage nous l'avons recu et recevons par ces presentes, sauf les droits du Roi, en autres choses et de l'autrui en toutes; et le dit comparant a fait et souerit nos mains le serment de bien et fidelement servir sa majeste, et de nous avertir et nos successeurs s'il apprend qu'il se fasse quelque chose contre son service; et le dit comparant s'est oblige de fournir son aveu et denombrement dans le tems prescrit par les loix, coutumes et usages de cette province dont et du tout il nous a requis acte, que nous lui avons accorde et a le dit comparant signe avec nous.

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Par odre de son Excellence.

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18 St. Louis of Quebec, his liege fealty and homage which he is bound to render and profess to his most excellent majesty George III, on account of the fief and seigniory, and he presented to us as his title and evidence of property, a grant made and conceded by the Marquis de la Jonquiere and Francois Bigot, heretofore governor general and intendant in this country, dated the 18th of October, 1750, to Messrs. De Bonne, half-pay captain in the regiment of Conde, and the Chevalier de Repentigny, ensign in the troops of this country, the place called the Sault Ste Marie, with six leagues front on the portage, by six leagues in depth, running along the river which separates the two lakes, to be by them, the said De Bonne and De Repentigny holden and enjoyed, as well as by their heirs and representatives in perpetuity as a fief and seigniory, high, middle, and low justice and jurisdiction, with the right of fishing and hunting only over the whole extent of the said grant, under the charge and condition to do fealty and homage at the chateau of St. Louis, subject to the usual rights and dues according to the custom; to preserve and cause to be preserved by their tenants the oak timber proper for the construction of royal ships; to give information to his majesty of any mines, quarries, and minerals, if any should be found within

the limits of said grant; that appeals from the judge who may be established therein shall be taken up to the royal court at Montreal; to keep fire and place and cause the same to be kept by their tenants; to clear and cause the same to be cleared by their tenants, in default whereof the present grant shall be and remain null; to leave the royal roads and others which may be judged necessary for public utility, and to cause the same conditions to be inserted in the grants which they may make to their tenants on the usual rent and due per arpent front by forty in depth; to leave the open beach free to all fishermen, except what they shall need for their own fishing. And in case his majesty should need hereafter any part of said land for the construction thereon of forts, batteries, arsenals, magazines, and other public works, and firewood for the garrison of the forts, without being bound to pay any indemnity; reserving also in the name of his majesty the right to take on said grant the oak timber, spars, and generally all kind of timbers which may be proper for the construction and armament of his vessels, without being bound to pay any indemnity, the whole at the discretion of his majesty. Thereof one half of said signiory of the Sault Ste Marie, above described, belonging to the said party here present by inheritance from the said Louis de Bonne, his father, as his only son and heir, being one capable, that it would please us to accept and receive him in fealty and homage for the half of said fief and seigniory, holding in full fief from his majesty, and thereupon immediately placing himself as a vassal, uncovered without sword and spurs, and his knee on the ground, he proclaimed in a loud and audible voice that he did fealty and homage, as he was bound to do, to the king at the chateau of St. Louis of Quebec, for the said fief and seigionry; to which profession of fealty and homage we have received, and do by these presents receive him, saving the rights of the king in other, and of other persons in all; and the said party has made and subscribed the oath well and faithfully to serve his majesty, and to notify us and our successors if he learns that anything should be attempted against his service; and the said party bound himself to furnish us his confession and enumeration within the time prescribed by the laws, customs, and usages of this province, of all which he required us to furnish him a certificate which we have herein granted him, and the said party has signed with us.

We suspend the said fealty and homage until the aforesaid party shall have presented to us the ratification of his said seigniory or more fully informed.

(Signed) FRED. HALDIMAND.

By order of his excellency,

(Signed) J. L. LUGUET, *G. P. T.*

I certify that the above writing, and on the other pages is conformed to the original, deposited in my office.

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And now comes Alfred Russell, the acting attorney for the United States for the district aforesaid, and for and in the name of the United States of America, reserves all manner of objections to the manifest errors and insufficiencies in the said amended petition contained, and for answer thereto, and unto such parts of said amended petition as he believes it necessary for him to answer, he answering says that it is not true, as he verily believes, that Louis de Bonne and Louis le Gardeur de Repentigny ever presented their petition to the persons named in said petition for a grant or concession of lands, or that said persons ever had any authority to make
20 any such grant from the crown of France, as is stated in said petition, or that any such grant or concession was ever made by the Marquis de la Jonquiere as lieutenant governor of New France, and Francois Bigot, then intendant of New France, or that any record of any such grant or concession was ever made as is stated in said amended petition, or that if made it included any land on the south side of St. Mary's River.

And the said district attorney, further answering, denies that any letters patent or warrant of royal confirmation of said grant or concession was ever made at the time and place and in the book alleged in said amended petition; but if made, it contained, on the showing of the said petitioners themselves, an express provision to the effect not only that the said pretended patentees should, and should continue without intermission to, use and occupy *(fair tenir feu et lien)* the said concession by their tenants, but also that they should bring the same into a productive and profitable condition, *(mettre en valeur,)* in default whereof the same should be reunited to the said king's domain; the latter part of which said provision relating to the improvement of said concession was, on the showing of the said petitioners themselves, a provision subsequently and specially superadded by the said king to the provisions of the said pretended grant and con-
21 cession from the said lieutenant governor of New France, and the whole of which provision, as to the substantial considerations the said king thereunto moving, and the public benefit and increased public revenue intended to be thereby secured, the said acting district attorney denies that said petitioners, or those under whom they pretend to derive, or any of them, ever at any time sufficiently observed or complied with; and he especially submits that on the showing of the said petitioners themselves the same has been wholly disregarded, neglected, and violated, and the said alleged fief, if ever possessed, abandoned and deserted, and in fact as well as of right reunited to the superior domains, as hereinafter shown, for sixty years and upwards.

And the said acting district attorney, further answering said amended petition, says that the exact dates of the respective deaths of the original pretended grantees are not stated with amended petition, and that such statement and strict proof thereof is essential, inasmuch as they may have been joint tenants, with right of survivorship, and denies that Pierre Amable de Bonne was the only child and only heir of said Louis de Bonne, who is alleged to have been one of the said grantees in said pretended letters patent; and also denies that any such act of faith and homage was ever done and performed as in said petition alleged, either for himself or in behalf of
22 Louis Gaspard le Gardeur or any person, and as to the pretended moiety of the petitioners, De Repentigny, denies that fealty or homage was ever at any time rendered by the said Louis le Gardeur, the pretended original grantee, or by any one, and denies that the reliefs and other customary money fines or dues were ever paid for the same; and especially denies that the said Pierre Amable de Bonne did homage, if at all, for the pretended moiety of the petitioner, De Repentigny, or for more than his own pretended moiety of the said alleged concession; and as to the pre-

tended moiety of the said De Bonne, denies that the said Louis de Bonne or his representatives were ever in possession thereof, and that the said Pierre Amable de Bonne, or any one else, ever rendered homage, or, if at all, other than suspended fealty and homage therefor, as in exhibit marked I to said amended petition annexed is stated; and submits, on the showing of the said petitioners themselves, that the said Pierre Amable de Bonne and his assigns attempted, from time to time, without consent obtained, to sell and transfer to certain strangers in said petition mentioned, the whole or more than two-thirds of his interest in the said alleged fief, and says they did so without retaining one-third of the same for their own use, and without reserving fealty or any sufficient right of domain or seigneurial right
23 over the same, and without paying or causing to be paid the quints and other customary money fines or dues which were not then or at any time thereafter paid by the said Pierre Amable de Bonne or by his pretended assigns, from time to time, or by any one on his or their part; and as to the whole of the said fief or concession, says that by the laws of the country from which the said pretended title was derived, that is to say by the custom of Paris, the said alleged fief was thus rendered liable to such and so many money fines and dues, and that the burden and cost of bringing the same into a productive and profitable condition, pursuant to the provisions aforesaid, was so great and the climate so severe, that for the same or other reasons the said fief, if ever possessed, was in fact abandoned and deserted, and the said De Repentigny or De Bonne, or their representatives, went to reside in foreign countries, and wholly avoided payment of said money fines or dues and the burden and cost of said improvement, and submits that the said petitioners were bound to state, but have not stated, the exact date of, and the circumstances connected with, the first alleged wrongful possession or resumption of the said alleged fief by the said United States; and says that the said United States never forcibly or otherwise dispossessed the said petitioners, nor those under whom they pretend to derive, but the said concession itself, if ever possessed, was in fact abandoned and deserted by the said pretended grantees and their pre-
24 tended representatives, and was and stood possessed by the said United States, and so it was not necessary for the said United States to proceed to a judicial forfeiture thereof; and says that there was in fact no court of justice in existence competent to hold pleas in such matters and afford redress to the said United States under the circumstances of the case, and so it was not possible for the said United States to proceed as aforesaid; and says that thus in fact as well as of right the said fief so abandoned and deserted was, by the act of the said alleged grantees themselves or their representatives, as well as by the express provisions of the said letters patent, reunited to the supreme domain, vested in the people of the United States of America, and the burden and cost of bringing the said fief or concession into a productive and profitable state by the general administration, survey, and settlement thereof, by extinguishing the Indian title thereto, and by the foundation and incorporation of a company for the construction of a ship canal, and otherwise, has ever since, that is to say for sixty years and upwards, been thrown upon and borne by the said United States.

And the said acting district attorney further denies that any such act of fealty and homage, had it been performed, would have been a good
25 and sufficient compliance with or a sufficient discharge of the requirements of said alleged letters patent, or would have enured to the benefit of both of said grantees, and the undersigned prays that the United States may have the same benefit and advantage of this defence as they would have had if said amended petition had for these causes been demurred unto.

And the said acting district attorney, for and in behalf of the said United States, also denies that the original grantees therein named or their representatives, ever were beneficially, or otherwise than officially, as in said amended petition stated, if at all, in possession of any land on the south or United States side of St. Mary's River, under the said alleged letters patent or otherwise, or being in possession, caused a considerable amount of clearing to be done thereon, or procured cattle from Illinois and kept them thereon, or rented three leagues thereof to tenants between the years A. D. 1750 and 1762, as in said petition is stated, and denies that said petitioners are the legal heirs or legal representatives of said pretended grantees, or that they have any right or title to said land, or to any interest therein, or to any part thereof, but refers to such proof as the said petitioners shall make concerning the said several alleged matters and things, and submits that all the alleged mesne conveyances, devises, and descents under which the said petitioners claim, are void by reason of the non-seizen by themselves or their tenants, of the alleged grantors, devisors, and ancestors respectively.

26 And the said acting district attorney, for and on behalf of the said United States, denies that the said king of France, at the time of the said alleged grants of 1750 and 1751, had himself acquired a title sufficient to enable him to grant the alleged lands, for that the said lands were then newly discovered and vacant, and not even surveyed, nor were the laws and government of the said king in real force and effect thereon, nor was the Indian title thereto extinguished, and denies that the said Louis le Gardeur de Repentigny and Louis de Bonne, the original grantees, or either of them, complied, in time, with the provisions of the treaty of the 10th February, A. D. 1763, between France and England, especially with the fourth article thereof, by becoming British subjects or selling the said lands to British subjects within the period in said article mentioned, and submits that they and their respective heirs and representatives were in fact aliens and incapable of devising and taking by devise, as well as of inheriting or even holding, lands while the said lands were part of the dominions of the British crown, and that the said lands reverted or escheated to the British crown for this reason, as well as for non-observance of the provisions of the patent, and that such proceedings and entry as were proper and necessary were had by the British crown in the premises, and further denies

27 that at the time contemplated in the treaty of the 19th November, A. D. 1794, between England and the United States, the persons through whom the petitioners claim were British subjects or held the said lands, and submits that the petitioners are not entitled to the benefit of said treaty.

And the said acting district attorney, for and on behalf of the said United States, insists also that the United States, or those through whom they derive, have enjoyed or possessed the said lands "*a juste tierre*" and "*de bonne foi*," openly and without molestation for upwards of twenty years, and under the 113th article of the custom of Paris, have therefore acquired the so-called "prescription" of ten and twenty years respectively; and further, that the said United States have openly, publicly, and without any molestation, enjoyed, used, and possessed the said lands for the space of thirty years and upwards continuously, and therefore, even supposing that they had no other title, have, under the 118th article of the said custom of Paris, acquired by such possession alone the so-called "prescription" of thirty years, and that the said petitioners are now, under the said custom of Paris, barred and precluded by the so-called "prescription" of ten, twenty, and thirty years respectively, or some or one of them, as well as by the laws of the United

28 States and of the State of Michigan, and have no right to the said lands or to any part thereof; and further insists that the said petition-

ers, or those through whom they claim, did not give such notice in writing, or have such evidence recorded as and in the manner required and provided by the act of Congress of the twenty-sixth March, A. D. 1804, entitled "An act making provisions for the disposal of the public lands in the Indiana territory, and for other purposes," and by other acts; and that by the act of Congress of the 3d March, A. D. 1805, entitled "An act supplementary to the act entitled 'An act for the disposal of the public lands in the Indiana territory, and for other purposes,'" and by other acts, the right, if any, of the said petitioners, however derived, has become void and is forever barred; and further insists that the said Pierre Amable de Bonne is alleged in said amended petition to have sold his interest in said land to one James Caldwell in or about the year 1796, and the said Caldwell to have resold the same, in or about the year 1798, and that said lands were then forest lands, with timber standing on them, and that by the laws of the country from which said petitioners' pretended title is derived, that is to say, by the
29 royal arret dated 15th March, A. D. 1732, the sale of all wooded lands was null and void, and the lands so attempted to be sold stood ipso facto reunited to the superior domain, without any judicial decree of reunion being necessary. And the said acting district attorney prays that this court may now and in the present proceeding declare the said fief and seignion reunited to the public domain of the United States of America, for, among other reasons, the failure on the part of the original grantees or their representatives to reside on, occupy, clear, and improve the said fief and their failure to render the said homage.

And the said acting district attorney, for and on behalf of the said United States, insists, in bar and preclusion of the alleged rights of the said petitioners to the said lands, or any part thereof or any interest therein, that if any such right or interest therein ever existed as against the said United States, it has long since been allowed to lapse and been lost and waived, and the said fief abandoned and deserted by the petitioners and those under whom they pretend to derive, and their respective tenants, if any such there ever were, and that the said petitioners have no right or claim thereto on account of the lapse of time between the treaty of peace concluded between Great Britain and the said United States, on or about the 3d day of
30 September, A. D. 1783, and the filing of the said petition, during all which period the said United States or their grantees have claimed to own the absolute title to said lands, and that for more than sixty years past the fee and title to the said lands has been vested in the said United States or their grantees, subject, nevertheless, during part of the time, to the Indian claims, for the extinguishment whereof neither the said petitioners nor those under whom they pretend to derive took any effectual measures, though the same was necessarily the first step towards bringing the said concession into a productive and profitable state; and says that the Indian title or occupancy was in fact never extinguished save by the said United States, but the Indians remained entitled thereto and in the actual possession thereof, and being so in possession, ceded the same to the United States or to their nominees by the following treaties or otherwise, that is to say: a tract of sixteen square miles, extending from the Big Rock to the Little Rapids on the St. Mary's River, was ceded by the Indian treaty made at the Sault Ste Marie on or about the sixteenth day of June, A. D. 1820; and a treaty of eighty thousand acres, more or less, upon the islands and the shores of St. Mary's River, wherever good land enough could be found, was ceded
31 by the Indian treaty made at the Fond du Lac of Lake Superior, on or about the fifth day of August, A. D. 1826; and the said United States have caused the whole district of country bordering on St. Mary's River and to the south thereof to be surveyed, and have actually used and occupied the same and sold and granted large portions thereof to private

individuals, who now own and occupy and possess the same under letters patent granted by the said United States, and whose names, or the names of the other persons claiming adversely, are not stated in the said amended petition as directed by the act of Congress of the nineteenth day of April, A. D. 1860, in said petition referred to; and the said United States claim the benefit of this defence in as full and ample a manner as they could have done had they interposed a special demurrer to said amended petition, setting forth all of the allegations above mentioned.

And the said acting district attorney, for and on behalf of the said United States, avers that he has no knowledge, information, hearsay, or belief save from the statements in said amended petition contained, in relation to the absence of said petitioners from the United States, of their ignorance of the act of Congress of the United States, approved March the twenty-sixth, A.
D. 1804, entitled "An act making provision for the disposal of the
32 public lands in the Indiana territory, and for other purposes," or of the subsequent act of Congress, approved April 23d, A. D. 1808, entitled "An act supplementary to an act regulating the grants of land in the Territory of Michigan," of the existence of which acts respectively the said acting district attorney submits that said petitioners were bound to be informed, or of the pecuniary helplessness of said petitioners or those under whom they pretend to derive, or of their inability to assert their pretended claim to said lands, and in relation to all of said allegations of non-residence, want of knowledge, and poverty of said petitioners, as alleged in said amended petition, the acting district attorney leaves the said petitioners to make such proof before the said court as they may deem desirable and necessary.

And the said acting district attorney, for and in behalf of the said United States, also denies that the pretended owners of said alleged concession ever caused to be entered or recorded in the general land office of the United States at Washington any sufficient caveat or protest as in said amended petition is stated.

And the said acting district attorney, for and on behalf of the said United
States, insists also, in bar of said claims of said petitioners, that the
33 place called and known A. D. 1750 as the Sault Ste Marie, (l' endroit nomme le Sault Ste Marie,) and the land included in the said pretended concession, was at and previous to the time of the said pretended grant or concession wholly and exclusively situate on the north side of the St. Mary's River and in the country now called Canada, and not within the present limits of the State of Michigan or the United States, and that if any such grant or concession or patent was ever made, it was and is void for uncertainty and could not and cannot be located or bounded or by order of this court correctly defined and surveyed, or the value of the land claimed by the petitioners in any way estimated or established.

And the said acting district attorney, further answering said amended petition, avers that a large portion of the lands bordering upon said river and within six leagues of the bank thereof, to wit, about one half of the said concession, is now the property of the United States, and has not been sold or in any way disposed of; that large tracts of the same are covered with water and are wholly unfit for cultivation or for any use or purpose whatever.

And the said acting district attorney finally denies all and every
34 allegation and averment in said amended petition not hereinbefore particularly answered to or denied, and denies all right, title, and interest of said petitioners set forth in said amended petition, and prays that said amended petition may be dismissed with costs.

(Signed) ALFRED RUSSELL,
Acting Attorney of the United States for Michigan.
LOCKWOOD & CLARKE,
of Counsel for U. S.

35 *Replication, filed Dec'r 17th*, 1861.

District court of the United States for the district of Michigan.

The replication of Louise Pauline de Repentigny, Lizette Antoinette le Gardeur de Repentigny, widow of Pierre Murville Bonfils, Josephine Lucrece le Gardeur de Repentigny, widow of Cyprian Clavie, Agnes Slacke, and Guy Rotton, to the answer of Alfred Russell, acting attorney of the United States for the district of Michigan, for and in behalf of the United States.

These repliants, saving and reserving to themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto, say that they will aver, maintain, and prove their amended petition to be true, certain, and sufficient in the law, to be answered unto; and that the said answer is uncertain, untrue, and insufficient to be replied unto by these repliants, without this, that any other matter or thing whatever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray, as in and by their said amended petition they have already prayed.

(Signed) J. M. HOWARD, *Sol. for said repliants.*

39 DETROIT DEPOSITIONS No. 1.

DISTRICT OF MICHIGAN, *ss:*

Be it remembered, that on this 16th day of December, 1861, the solicitors for the respective parties appeared before the undersigned, one of the commissioners of the circuit court of the United States for the district of Michigan, for the purpose of taking testimony in this case on the part of the petitioners. On motion of Mr. Russell, solicitor for the United States, and by consent of the solicitor for the petitioners, the further hearing was postponed until the 18th day of December instant, at 9 o'clock in the forenoon.

And now on this 18th day of December, A. D. 1861, the parties again appear by their respective attorneys and solicitors, and Alexis Frederick Favarger, being sworn upon his voir dire, says that he is the agent for the petitioners in this cause, and has a pecuniary interest in the result of this suit, there being an understanding that he shall have a percentage of the amount recovered, as a compensation for his services and expenses in the prosecution of the suit. If the petitioners shall fail to recover anything in the prosecution of said cause, the witness is to have nothing, either for the expenses he has been at or for his services and expenses for the future or further prosecution of the cause. He is not in any way related by blood or marriage to any of the petitioners, or to any person under whom they claim.

40 Here is shown to the witness a printed copy of the act of Congress of 1860, marked Exhibit A, (being the bill as passed,) on which is the following endorsement, in the witness's handwriting: A. Favarger, Chevalier de Repentigny's heir, and representative of De Bonne. As to which the witness says that he meant to say that he was the agent of De Repentigny's heirs and those of De Bonne, and nothing more. I asked a friend of mine to give me an endorsement in English, to put on the bill during the pendency of the same, and previous to its passage, and he gave me this form. If the petitioners should recover any lands, I should be entitled in relation to the Repentigny claim to fifteen per cent. of the same, and so

in relation to the land warrants. As to the De Bonne branch, I shall be entitled to forty thousand acres of the land recovered, and six thousand acres of land warrants, in case that branch of the claim is established. As to the Repentigny branch, in case of a recovery, the witness is to be repaid the expenses incurred on their account in the prosecution of this cause.

(The witness is objected to by the counsel for the United States, on the ground that he is interested in the event of this suit as above shown, and therefore incompetent.)

Cross-examined on his voir dire by the counsel for the petitioners.

I have been acting as the agent for this claim since October, 1849. Have been to Washington every year since then urging the same before Congress, until the passage of the said act in 1860. Since October, 1860, I have been at Detroit, for the purpose of prosecuting said claim in this court.

(Witness was then sworn in chief, and proceeded with the direct examination as follows:)

41 I am fifty-three years old; was born at Neufchatel, in Switzerland; French is my mother tongue; I was educated at Rouen, near Paris; I left France in October, 1824. I can speak, read, and write the English language, but not very fluently. When I left France I went to reside in the island of Guadeloupe, in the West Indies. I arrived there the 30th day of November, A. D. 1824, and settled at Pointe a Pitre. At first I was a merchant's clerk, and afterwards I traded as a merchant on my own account. I know a town on said island of Guadaloupe called Petit Bourg. This place, by water, is about twelve miles from Pointe a Pitre. I also know a place on said island called Capesterre, which is about twelve miles south of Petit Bourg. Basse Terre, in the same island, on the southwest coast, is about twelve miles from Capesterree. All of the above-named towns are on the coast of said island. During my residence at Guadaloupe I became acquainted with a lady, reputed to be the widow of Antoine Camille de Repentigny. She resided at Petit Bourg. I first knew her in 1826, and shortly after she became the wife of Monsieur —— Mignard; do not recollect his christian name. I know the fact that said lady and Monsieur Mignard lived together as husband and wife at Petit Bourg for many years. Mignard died, and this lady afterwards became the wife of Pierre Monpezat, and they lived together as husband and wife at Petit Bourg until I left them in 1849. When I left there they were still living together in the above relation. I was in the habit of visiting Petit Bourg for many years, and of seeing this lady and conversing with her. Visited at her house several times and became acquainted with her children and husband. I used to meet her and her family on the sugar plantation, where I was in the habit of spending the Sabbath. This lady died since I left Guadaloupe, and about five years ago, as I have been informed by the notary and agent for the family at Guadeloupe by letter. When I knew this lady she had three daughters by her first husband; one was Louise Pauline le Gardeur de Repentigny, one of the petitioners in this case; another was Lisette Antoinette le Gardeur de Repentigny, now
42 the widow of Pierre Murville Bonfils, another of said petitioners; and the third was Josephine Lucrece le Gardeur de Repentigny, now the widow of Cyprian Clavie, and another of said petitioners. When I knew those girls they were living with their mother at Petit Bourg. The latter told me that the name of her first husband was Antoine Camille le Gardeur de Repentigny.

(The counsel for the United States objects to the above testimony in relation to the declarations of Madame Camille, and all other questions and answers involving hearsay, as incompetent.)

The witness proceeds: Madam Camille told me in my conversation with

her in 1849, that her first husband's father was Louis Gaspard le Gardeur de Repentigny, and that her first husband's grandfather was Louis le Gardeur de Repentigny, and that Louis, the grandfather of her husband, was one of the grantees of the seignory, at the Sault St. Marie, in the United States. She told me her husband's grandfather was born in Canada, at Montreal or Quebec, and was an ensign in the French army in Canada. Madame Camille also told me that the wife of said grandfather was Maria Magdeline Chaussegros de Levy. She further told me that said grandfather had been a military officer and in command at the post of Sault St. Marie for several years. She also told me that the said grandfather was sent by the government of France to some place in the East Indies, in a military command; that he returned from there and was sent by the same government as governor general to Senegal, on the coast of Africa. How long he remained there she did not tell me, that I remember. From Senegal she said he went to Paris, where he died in 1786. Madame Camille also told me that Gaspard, his son, was born in Canada, at Quebec or Montreal, and was his only child; that the wife of said Gaspard was Marguarite or Madaline Pauline Marguerite se Prevost Duquesnel, and that they
43 were married at Capesterre, in Guadaloupe. Madame Camille also told me that her first husband (Camille) was born in Touro, France, and died in Guadaloupe in 1820, that Camille's children were those three ladies above named, Lizette, Josephine, and Louise Pauline, and one son, named Theodore Rene, who died at Capesterre aforesaid. Theodore was about four or hve years old when he died.

Madame Camille told me that Gaspard had three children, Louis, Antoine Camille, and a third whose name I do not remember. Louis died at the age of about twenty-five years, leaving no children, never having been married. The one whose name I cannot remember, she said died at Guadeloupe, leaving no children, he never having been married.

I knew the widow Gaspard; have seen her several times at Petit Bourg, at the plantation I have alluded to where I used to go Sundays. I saw her in company with the widow of Camille and her three daughters before named. She treated the widow of Camille as her daughter-in-law, and her daughters as her grandchildren. I heard Madame Gaspard address the widow Camille as her daughter-in-law, and her three girls as her grandchildren. The grandchildren in return treated Madame Gaspard as their grandmother and Madame Camille treated and addressed her as her mother-in-law. I became acquainted with Madame Gaspard between 1826 and 1828, and conversed with her four or five times during that period. She died in 1836, as I learn from the family. When I knew her she was the wife of the Count de Marchais, who was her second husband. They were married at Capesterre, and she and the count went and resided in France, at a place called Chateau de Courtavnel, Department Seine, at Marne, and when I saw Madame Gaspard she was on a visit to her friends at Petit Bourg. I never saw the count, her second husband. He owned a plantation at Capesterre. I heard Madame Gaspard say that her first husband was entitled to a concession at the Sault St. Marie, in the United States, which came to him from his father.
44 She said her first husband's father was Louis Chevalier de Repentigny; that he was born in Canada; that after being a chevalier he became a count, and was in the French military service in Canada. At this time Madame Gaspard was about sixty years old and in good health.

I knew a French gentleman in Guadeleupe by the name of Charles E. Violet. He was a lawyer, practicing at Point a Pitre. Hs was also the agent for the Repentigny family in regard to this claim, and in 1844 was sent by them to the United States for the purpose of procuring the recognition of this claim by Congress.

I was present in the office of A. Thionville, at Pointe a Pitre, Guadeleupe, in 1841, Thionville then acting as notary public when M. Violet was present. The widow Camille, her husband, M. Montpezat, M. Bonfils, M. Clavie, the two sons-in-law of Madame Camille, and her three daughters above named, were also present. The object of this meeting was to make an act of notoriety before the said notary respecting the pedigree of the family De Repentigny. This act of notoriety is a declaration or statement made by persons claiming to be acquainted with the subject-matter. Such an act was then drawn up by the said notary. Here a paper was shown the witness purporting to be an "*acte de notoriete*," signed by A. Thionville, and under the seals of several persons purporting to be officers of the island, and among them that of Jubelin, the governor of the island, and also under the seal of the American consul on the island "Felix Swan."

(To the introduction of this document the counsel of the United States object.)

The witness proceeds: I was present in the office of the notary, Thionville, when this document was written and signed. The persons I have above enumerated were also present. I saw the persons whose names are appended to the end of that document all sign the same in that office. I knew all the signers personally. The first signer, Faujas de St. Fond,
45 resided some twenty miles from Petit Bourg. The second, Louis Jean Baptiste, Chevalier de Bragelougne, resided about the same distance. 3d, Francois Segismond Dubois, resided about twelve miles. 4th, Jean Marie Maximilian de Vernon, resided in Petit Bourg. 5th, Louis Marie Benoist, resided in the same place. 6th, Jean Claude Prudeau, resided on the island, but I do not recollect where. 7th, Jean Baptiste Ride, lived at a place called Lamentin, about twelve miles from Petit Bourg. 8th, Louise Antoine Benjamin de Boubers Vojeanlieu, resided in Baie Mahaut or in Lamentin, say ten or twelve miles from Petit Bourg. 9th, Louis Cesar Comte de Pontives D'Amirat, resided at Baie Mahaut, about ten miles from Petit Bourg. And 10th, Antoine Nicolas Barbotteau Richelieu, resided at Petit Bourg.

These ten individuals were considered as gentlemen of the highest standing on the island. They were acquainted with the members of the Repentigny family. I heard this act of *notoriete* read over by the notary, Thionville, in the office, in the presence and hearing of the above-named gentlemen and of Madame Camille and her said three daughters, and of said Violet. I heard Madame Camille give her consent to that act of *notoriete* when it was read over. She made no objection to any statement of fact in that document. Her husband, Montpezat, was also present and heard it read over. He was there to give his assent to it, as were also his said wife and her three daughters. This document, with all the certificates upon it, was delivered to me in the same office in 1849, in the month of October, by Madame Camille, in the presence of her two sons-in-law, her three daughters, and her husband Montpezat. It was delivered to me to bring to the United States and use in the prosecution of the claim before Congress. This document is offered as an exhibit, and is marked "8 a," a translation of which, marked in the same manner, is also hereto annexed, as to which the witness says the same is a correct English translation of the original.

46 At the same time and place there were delivered to me by Madame Camille, in the presence of the same persons and for the same purpose, the following described documents.

A copy of the certificate of the death and burial of Louis Comte le Gardeur Repentigny, marked Exhibit 9, an English translation of which the witness also furnished, marked in the same manner. Also a document signed "Potard," purporting to be the original of Exhibit 9, marked 9 a. Also a document purporting to be a certificate of the death of Louis Gaspard le

Gardeur de Repentigny, marked Exhibit 10, a true English translation of which, marked in the same manner, is hereto annexed.

Also a document purporting to be a copy of a marriage contract of Antoine Camille le Gardeur de Repentigny, the birth of the said Louise Pauline and of the death of Louis le Gardeur de Repentigny, certified under the official seals of the island of Guadeleupe, marked Exhibit 11, a true English translation of which the witness furnishes and is hereto annexed, and marked in the same manner as original.

Also a certificate of the death of Theodore de Repentigny, similarly authenticated, marked Exhibit 12, a true English translation of which the witness furnishes, marked in the same manner, and is hereto annexed.

Also a certificate of the baptism of Antoine Camille le Gardeur de Repentigny, signed Grignon, cure de St. Martin, and certified by Ruisseau, marked Exhitit 13, an English translation of which is hereto annexed and marked in the same manner.

Also a document purporting to be certified extracts of the death of Antoine Camille le Gardeur de Repentigny, the birth of said Lisette Antoinette, the birth of said Theodore Rene, the death of said Theodore Rene, and the birth of said Josephine Lucrece, under the official certificates of the authorities of said island, and under the hand and seal of Jubelin, the governor of the island, marked Exhibit 14, a true English translation of which, marked in the same manner, is hereto annexed. All these papers were de-

47 livered to me by Madame Camille in October, 1849, as before stated.

(To the admission of all the above documents the counsel of the United States object.)

Madame Camille represented to me at the time she delivered me those documents, that they contained true statements of the facts purporting to be therein set forth.

Witness also produces a letter purporting to be signed by Louis Fourteenth, king of France, dated March the first, 1693, and an English translation thereof, both of which are marked Exhibit 26 a, and hereto attached, being a commission to the Sieur le Gardeur de Repentigny.

Also a document purporting to relate to the birth and baptism of Jean Baptiste Rene le Gardeur, dated June 15th, 1695, at Montreal, in Canada, and a true English translation thereof, both marked Exhibit 27, and hereto annexed.

Also a certificate of the birth and baptism of Marie Catherine Tucherean, wife of Jean Baptiste le Gardeur de Repentigny, September 23d, 1693, and a true English translation thereof, both marked Exhibit 28, and hereto attached.

Also a paper purporting to be an act or certificate of marriage of Jean Baptiste le Gardeur de Repentigny to Marie Catherine Tuchereau, and a true English translation thereof, dated July 24th, 1718, marked Exhibit 29, and hereto attached.

Also a paper purporting to be a petition of Jean Baptiste le Gardeur de Repentigny, to Louis the 14th, for a pension, and an English translation thereof, both marked Exhibit 30, and hereto attached.

Also a grant of a pension by said Louis 14, to the said Jean Baptiste, and an English translation thereof, both hereto annexed and marked Exhibit 31.

Also a paper purporting to be an order of the superior council, at Quebec, granting letters of emancipation to Louis le Gardeur de Repentigny, dated October 2d, 1741, and a true English translation thereof, both marked Exhibit 32, and hereto attached.

48 Also a paper purporting to be an act of emancipation of the said Louis le Gardeur by the governor of Canada, and a true English translation thereof, both marked Exhibit 33, and hereto attached.

Also a paper purporting to be a receipt from Agathe, the grandmother of Louis de Repentigny, dated January 10, 1743, and a true English translation thereof, both marked Exhibit 34, and hereto attached.

Also a paper purporting to be a letter of instructions from Beauharnais, governor of Canada, to Louis le Gardeur de Repentigny, to repair to Fort Niagara, dated May 5, 1746, and a true English translation thereof, both hereto attached, and marked Exhibit 35.

Also a paper purporting to be an order from La Galissoniere, governor of Canada, to the Chevalier de Repentigny, dated July 11, 1748, and a true English translation thereof, both marked Exhibit 36, and hereto attached.

Also an order purporting to be signed by the Marquis Du Quesne to the Chevalier de Repentigny, to go to the island of Jèsus and take command of troops, &c., and a true English translation thereof, marked Exhibit 37, and both hereto attached.

Also a letter from the Marquis Du Quesne to the Chevalier De Repentigny, at the Sault Ste Marie, dated April 24, 1754, with an endorsement thereon, and a true English translation of the whole, both marked Exhibit 38, and hereto attached.

Also a document purporting to contain the genealogy of the family De Repentigny, and a true English translation thereof, both marked Exhibit 40, and hereto attached.

Also a document containing copies of two letters, one from said Gaspard, the other from the Compte de Marchais, and a true English translation thereof, both marked Exhibit 41, and hereto attached; the whole of the document containing said letters are offered in evidence.

As to these fifteen last-mentioned exhibits, commencing with 26 a, and ending with 41, both inclusive, the witness says : I received them all from the family of Madame Camille, at Point a Pitre, in the office of the said
49 notary, Thionville. Both Madame and her husband represented that they had been long in the family, and had been kept as evidences of he geneaology of herself and family, and to show the births and deaths.

Madame Camille said that the above original papers, containing the signatures of the king, Louis 14th, and the governors Du Quesne, Beauharnais, and Galissoniere, and also the papers relating to the emancipation, and the above-mentioned receipt, had been in her husband's family ever since she could remember.

(The above documents received subject to objection of the counsel for the United States.)

Examination continued until Thursday morning, December 19, at nine o'clock.

THURSDAY MORNING, *December* 19, 1861.

Examination of witness Faverger resumed:

I knew Jubilin, the governor of the island of Gaudeloupe, in the year 1841. He was then acting governor of that island. I am also acquainted with the governor's seal of that island, and now look upon Exhibit 80, and say that the seal attached to the certificate therein signed "Jubelin" is the official seal of the island of Guadeloupe used at that time by the governor, and that said Jubelin's signature thereto is genuine.

Witness also looks at Exhibit 10, and says that the signature of said Jubelin thereto is genuine, and that the seal opposite said signature is also the genuine seal of the island of Guadeloupe.

Witness now looks upon Exhibit 11, and says that the signature of said Governor Jubelin thereto is genuine, and that the seal opposite said signature is also the genuine seal of the said island of Guadeloupe. He also looks upon exhibit marked 14, and says that the signature of said Jubelin

thereto is genuine, and that the seal set opposite said signature is also the genuine seal of the island of Guadeloupe.

Counsel for petitioners now offer in evidence a printed volume, entitled, "Journal d'un Voyage, fait par ordre du Roid dans l' Amerique Septentionale: Addresse a Madame La Duchesse, de les Diguiers, par le
50 P. De Charlevoix de la Campagnie de Jesus. Tome Cinguieme a Paris. Chez Nyon Fils, Libraire Quai des Augustins a L'occasion. MDCCXLIV. Avec Approbation & Privilege du Roy.

Witness says he procured this volume from Paris, France, in 1858. I could not find another copy in the United States, except in the library of Congress. The work is in six volumes, and the witness owns them all.

The witness furnishes a copy of map contained in said volume, between pages 414 and 415, marked Exhibit 42, and hereto attached.

A document is here shown to the witness purporting to be "A Brevet de Ratification de concession pour les 's, *vs.* De Bonne et Repentigny," written on parchment or vellum, and purporting to have been issued on the 24th of June, 1751, and signed "Louis"—"Bonille," as to which the witness says: I found this document in the clerk's office of the House of Representatives at Washington, in 1850, and in May, 1860, I received the same document from the secretary of the United States Senate in Washington, and gave my receipt therefor. I have compared the body of this instru ment with the copy under the same title contained in the amended petition filed in this case, and I find said copy in the amended petition to be a true and exact copy of the body of said instrument.

51 (The said instrument on parchment is by me, the commissioner, marked Exhibit 43, and signed with my name officially.)

Another paper is here shown to the witness, purporting to be an authenticated copy of said Brevet of Ratification, and to be certified under the seals of sundry officers at Paris, France, and among them the minister of foreign affairs and the minister of marine, and also under the hand and seal of Thomas Bickford, British consul at Paris, to which is also attached another document, certified, signed, and sealed officially in the same manner, headed "Ministere de la Marine et des Colonies," and to which is also attached another paper in the French language, not signed or sealed, as to which three papers witness says: I received them in a bundle, fastened together as they are now, at said Theonville's office, at Guadeloupe, in October, 1849, from the same family, and on the same occasion, about which I have previously testified, and for the purpose of prosecuting this claim before Congress. I have compared the body of said authenticated copy of brevet with the body of said instrument written on parchment, and find it to be a correct copy thereof, with the following exceptions, to wit: After the words "de la mettre en valeur," in the original parchment, it is "et d'y faire tenir;" in the copy it is "et d'y tenir et faire tenir." After the words "Pour l' utilite publique" in said copy it is "et laisser," while in the parchment it is "de laisser." After the words "a l' exception de celles dont les" in the copy, it reads "susdits sieurs auront;" in the parchment it is "dits Sr. de Bonne et Repentigny auront." These are the only exceptions. This document is marked Exhibit 44. The document attached to it secondly above mentioned is marked Exhibit 45.

I have inspected the seals attached to these two last-mentioned documents, to wit, the seals of the secretary "de affaires etrengeres," and "de la marine," used by the government of France, in Paris, in the year 1858, and believe those attached to said two papers to be genuine seals of those departments, true English translations of which are hereto attached, marked Exhibits 44 and 45.

52 I have been acquainted with a lady by the name of Agnes Slacke.

the old Chevalier Louis, did not have a will to my knowledge; I never heard of one, and do not know positively whether he had one or not. When Monsieur Violet came to this country in 1841 or 1842 he told me he brought most of the papers and documents above alluded to by me with him, and among them he told me he brought documents number 44 and 45. I suppose he had the pedigree with him and most of those old documents.

I found document marked number 43, being the brevet of ratification on the files either of the Senate or House of Represensatives in Congress in the year 1850, I was informed by M. St. Clair Clarke, esq., that this document had been on the said files since 1828. Clarke was the agent of the Slacke family in 1850, being substituted for Mr. John Sheriff, of New York.

56 Witness is now shown a printed paper purporting to be an English translation of said brevet of ratification, marked Exhibit B, and herewith filed, and says that he procured the same to be printed for the use of members of Congress during the pendency of said bill, which translation was made by either Clarke or Violet, as I find by my private memoranda. The translations of documents which have been presented and filed on my direct examination were made by Mr. Howard, counsel for petitioners, and myself. They are literal translations and as correct as we could make them, according to the best of my knowledge. I have been accustomed to speak and write the English language since I came to this country in 1849; before that time I could not speak a word of English.

Upon being asked why he procured said act of Congress to be passed, the witness says that the object was to have the claim recognized by Congress, so that the matter could be adjudicated upon by the United States courts.

I know of no other persons who claim to be heirs or representatives of either the De Bonne or Repentigny family than those mentioned in the petition in this cause I know no person by the name of Madame Favager in this country. I have heard of a person of that name at Chicago, Illinois, and she may be a distant relative of mine. She is not an heir of said families that I know of.

(Signed) ALEXIS F. FAVARGER.

Taken, sworn, and subscribed before me on the 23d day of December, A. D. 1861.

GEO. G. BULL, *U. S. circuit and district Court commissioner for the district of Michigan.*

Monsieur Favarger re-examined by counsel for petitioners:

Since the time I heard of the death of Madame Camille, as I have above stated, I have not heard from any source that she is living. The
57 notary, Thionville, who informed me of her death, has been the notary of the family ever since I was acquainted with them and long before, as they informed me. Since I heard of Madame Gaspard's death, as I have above stated, I have not heard from any source that she is living. I first learned that John Sheriff had been the agent of Agnes Slacke in regard to this claim from Matthew St. Clair Clarke, at Washington. The said Agnes Slacke informed me, when I was at her house in 1860, that the said Sheriff had been her agent for this claim since 1826.

Here a document is shown to the witness, purporting to be signed by John Sheriff, dated Washington, 7th December, 1826, as to which the witness says he found the same on the files of Congress in 1850, on his arrival to this country from the island of Guadeleupe. Said document is offered in evidence, and is hereto annexed, marked No. 49.

(Objected to by the counsel for the United States, as being new matter and not being properly authenticated.)

(Signed) ALEXIS F. FAVARGER.

Taken, subscribed, and sworn before me this 23d day of December, A. D. 1861.

GEO. G. BULL, *U. S. cir. and dist. court, Commissioner for the district of Michigan.*

58

59 EXHIBIT A.

Bill as reported by Mr. Benjamin.

36th Congress, 1st session. S. 92.

In the Senate of the United States, January 19, 1860, Mr. Bingham asked, and by unanimous consent obtained, leave to bring in the following bill, which was read twice, and referred to the Committee on Private Land laims; January 26, 1860, reported by Mr. Benjamin without amendment.

A bill authorizing the courts to adjudicate the claim of the legal representatives of the Sieur de Bonne and of the Chevalier de Repentigny to certain land in the Sault Ste Marie, in the State of Michigan.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the legal representatives of the Sieur de Bonne and of the Chevalier de Repentigny be, and they are hereby, authorized to present their petition to the United States district court for the district of Michigan, setting forth the nature of their claim to certain land at the Sault Ste Maria, in the State of Michigan, under an alleged grant, in seventeen hundred and fifty, from the governor and lieutenant general, and from the intendant general of New France, now Canada, with evidence in support of their claim, stating the names, as near as may be, of all persons claiming adversely, and praying that the validity of the title may be inquired into and decided under the laws of nations, the laws, usages, and customs of the country from which the same was derived, and the treaties and laws of the United States; and the said court is hereby authorized to examine the same, and, in adjudicating the question of the validity of the title as against the United States, to be governed by the laws of nations and of the country from which the title was derived, and also by the principles, so far as they are applicable, which are recognized in the act of Congress approved the twenty-sixth May, eighteen hundred and twenty-four, "enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try validity of the same," and the district attorney is hereby directed to proceed, in defence of the

60 interests of the United States, in all things as required and directed by the aforesaid act of twenty-sixth May, eighteen hundred and twenty-four: *Provided,* That suit shall be instituted by the claimants within two years from the passage of this act, and that an appeal may be taken, either by the claimants or the United States, to the Supreme Court of the United States, within one year from the date of the rendition of the decree of the district court aforesaid.

SEC. 2. *And be it further enacted,* That in the case of a final decision under this act against the validity of the said claim, or in case of the failure of claimants to prosecute it within the period specified, the said claim shall be held forever barred, both in law and equity; but in the case of a final decree in favor of the validity of the grant, it shall not be construed to affect

or in any way impair any adverse sales, claims, or other rights, which have been recognized by the United States within the limits of the said claim, or which, under any law of the United States, may have heretofore been brought to the notice of the land commissioners or of the land officers in Michigan, or any of the land granted to the State of Michigan, or occupied by it for the Sault Ste Marie canal, its tow-path, and appurtenances, but for the area of any such adverse claims the legal representatives of the said De Bonne and Repentigny shall receive from the Commissioner of the General Land Office warrants authorizing them or their assigns to enter any other lands belonging to the United States, and subject to entry, at private sale, at one dollar and twenty-five cents per acre, which warrant shall be for sections, or legal subdivisions of sections, at the option of the parties entitled to receive them.

Endorsed: A. Favarger, Chevalier de Repentigny's heir and representative of De Bonne.

61 EXHIBIT B.

Brevet of ratification as translated for use of U. S. Senate.—Royal confirmation of the concession made to Messrs. Debonne and Repentigny.

On this 24th day of June, 1751, the king being at Versailles, wishing to confirm and ratify a concession made the 18th October, 1750, by Mons. de la Jonquiere, lieutenant governor general in New France, and Bigot, intendant of the said place, to Mons. Debonne, disbanded captain of infantry, and to Mons. de Repentigny, ensign of the Canada troops of the place called Sault St. Marie, containing six leagues of front upon the portage by six leagues in depth, bordering upon the river which seperates the two lakes. His majesty has ratified and confirmed the said concession by virtue of which the said Messrs Debonne and Repentigny, their heirs and assigns, shall enjoy forever the said land in fee simple, and seignory, with the right of hunting and fishing within the limits of the said concession, in conformity with the concession which has been already made to them, without their being obliged to pay his majesty or his royal successors any finance or indemnity for it, to whatever sum it may amount, his majesty having remitted it to them in gift, on condition of bearing faith and homage to the castle of St. Louis, in Quebec, by which they are bound to the performance of all the customary obligations and duties according to custom of Paris, retained in said country, viz: That all appeals from the judge appointed there shall be made to the royal court of Montreal; that they shall preserve and cause their tenants to preserve the oak trees suitable for the construction of vessels for his majesty; to inform his majesty or the governor and intendant of the country, of the mines and minerals that may be discovered within the limits of the said concession; themselves and their tenants to occupy the land to the exclusion of all others, in default of which condition this concession shall be null and void. They shall moreover, allow all roads necessary for the public convenience, and cause to be inserted like conditions in all the concessions which they themselves shall make to others. They shall allow to all fishermen the use of the shores which they themselves shall not require for their own use; and in case his majesty shall hereafter require any parts of said land for the construction of forts, batteries, armories, magazines, and other public works, and the firewood necessary for the use of the said forts, he may take them, as well as
62 the trees which may be necessary for the aforesaid public works without any liability to damages. His majesty wishing that the said concession should be subject to the above-named conditions without any exception, and without protest, that they not being stipulated in the said

concession, In testimony of which his majesty has ordered me to draw-up this brief, which will be recorded in the registry of the superior cons sul of Quebec; and which his majesty has been pleased to sign with his own hand, and caused to be countersigned by me, his counsellor, secretary of state, and treasuery.

(Signed) LOUIS.
(Signed) BOVILLE.

I do hereby certify the foregoing to be a true copy of an entry as on record in the office of the records, at Quebec, in a French register, entitled "Registre D. Intendance Concess en Firy, folio 69."

Secretary's office, Quebec, July 2, 1842.

CHRISTO DUNKIN, *Assist. Sec.*

His excellency the Right Honorable Sir Charles Bigot, G. C. B., one of her majesty's most honorable privy council, governor general of British North America, &c., &c., &c., &c., &c., to all whom these presents may concern:

I do hereby certify that Christopher Dunkin, esq., is one of the assistant secretaries for the province of Canada, duly authorized as such, in consequence whereof full faith and entire credit are and ought to be given to his signature in such capacity, wherever the same may appear.

Given under my hand and seal at arms, at Quebec, in Canada, this second day of July, one thousand eight hundred and forty-two, and in the sixth of her majesty's reign.

By his excellency's command:

THOS. C. MURDOCK.

63 EXHIBIT VIII*a*.

Act of notoriety, 11th May, 1846.

Translation.

64 Before Master Augustus Thionville, senior, and his colleagues notaries at Point a Pitre, (Guadeloupe) undersigned, appeared Mr. Alexis Frederick Favarger, merchant, residing at Point a Pitre, who brought to Mr. Thionville, one of the undersigned notaries, (as first draught) one of the original brevets of an act of notoriety relative to the said De Repentigny family, written by the said Mr. Thionville and his colleague, notaries in this city, on the 13th March, A. D. 1841, registered on the 20th said month, folio 147, verso case 5th, and at the fee of fifty centimes.

The original brevet of this act remains annexed to the first draught (minute) of this present act, after the above mentioned by the undersigned notaries.

Made and passed at Pointe a Pitre, in our office, the 11th day of May, A. D. 1846.

(Signed) A. TH.

And the said appearer has signed with the notaries after reading the first draught of the present act, which remains in the possession of said undersigned notary, at the end of which is written "Registered at Pointe a Pitre, on the 18th of May, 1846, fo. 163, R. C. 3 and 4. Received 50 centimes.

(Signed) A. LANCON.
(Signed) A. THIONVILLE.

Tenor of the annexed.

Before Master Augustus Thionville, senior, and his colleague, notaries at

Pointe a Pitre, (island of Guadeloupe,) undersigned, appeared the following persons:

1st. Mr. Alexander Aymar Faujas de Saint Fond, aged 66 years, marshal des camps of the king's armies, retired from service, chevalier of the royal and military order of St. Louis, officer of the legion of honor,
65 commandant-in-chief of the militia of the island of Guadeloupe, (north division) ancient mayor of the parish of Canal, (Guadeloupe) where he is a proprietor, and where he resides, actual president of the colonial parliament of this island of Guadeloupe.

2d. Mr. Louis Jean Baptiste, Chevalier de Bragelougne, aged 87 years, chevalier of the royal and military order of St. Louis, lieutenant colonel of infantry, retired from service, ancient commandant and mayor of the district of "Morne a l'Eau," (Guadeloupe,) where he is a proprietor and where he resides.

3d. Mr. Francois Sigismond Dubois, Comte d'Estrelau, aged 76 years, colonel of infantry retired from service, chevalier of the royal and military orders of St. Louis and the legion of honor, ancient mayor of the parish of Baie Mahault, (Guadeloupe,) where he resides, and where he is a proprietor and ancient principal chief of the militia of the island of Guadeloupe, (west division.)

4th. Mr Jean Marie Maximilien de Verno, Barron de Bonnevi, aged 64 years, member of the common council of the district of Petit Bourg, (Guadeloupe,) where he is a proprietor, and where he resides.

5th. Mr. Louis Marie Benoist, aged 67 years, grand maternal uncle by marriage of the Misses Le Gardeur de Repentigny, hereafter named, ancient capt. of the militia of the district of Petit Bourg, (Guadeloupe,) where he is a proprietor, and where he resides.

6th. Mr. Jean Claude Prudeau, aged 70 years, ancient captain, aid major of the militia of the parish of Capesterre, (Guadaloupe,) where he resides, and where he is a proprietor, ancient administrator of the sugar plantation, situated in the island of Guadeloupe, in said district of Capester re, and belonging to the family Le Gardeur de Repentigny, hereafter named.

7th. Mr. Jean Baptiste Ride, aged 83 years, lieutenant colonel of infantry, retired from service, ancient commandant of the district of the
66 Lamentin, where he resides, and where he is a proprietor, chevalier of the royal and military order of St. Louis, and superior officer retired from service of the militia of the Lamentin, (island of Guadeloupe.)

8th. Mr. Louis Antoine Benjamin de Boubers Vojeanlieu, Baron de Sanquieres, aged 54 years, ancient major of the militia of the Lamentin, (Guadeloupe) and member of the common council of the said district, where he is proprietor, and where he resides.

9th. Mr. Louis Cesar Comte de Ponteves d'Amirat, aged 62 years, chevalier of the royal and military order of Saint Louis, commandant of the militia of the district Baie Machault, (Guadeloupe,) at present assistant mayor of said district, where he is proprietor and where he resides.

10th. And Mr. Antoine Nicholas Barbotteau Richelieu, aged 61 years, proprietor residing in the district of Petit Bourg, (Guadaloupe)—

Who have by this present act attested for truth and notoriety to all those whom it may concern, to know perfectly:

That Mr. Louis le Gardeur, Chevalier Comte de Repentigny, chevalier of Saint Louis, brigadier of the king's armies, ancient governor general and commandant in chief at Senegal, (coast of Africa) to whom was granted in 1750 conjointly with Mr. Debonne, captain of the regiment of Cande, a concession of six leagues square of land in Canada, at the place called Sault Ste Marie, (Nouvelle France,) being this day State of Michigan, territory of

the United States of America, was married to Miss Marie Magdeline Chaussegros de Levy, and died at Paris on the 9th October, A. D. 1786, left as his sole heir and only son, born at Quebec on the 10th of July, A. D. 1753, of his marriage with said dame Chaussegros de Levy, viz: Mr. Louis Gaspard Le Gardeur, Comte de Repentigny, captain de Naisseau of the royal navy, and chevalier of St. Louis.

67 That said Gaspard married at Capesterre, Guadeloupe, on the 9th of December, A. D. 1780, with Miss Magdeline Pauline Marguerite le Prevost Duquesnel, afterwards the wife by second marriage of Mr. Le Comte de Marchais.

That from the marriage of said Louis le Gardeur Comte de Repentigny, with the said Magdeline Pauline le Prevost Duquesnel, were born three children, viz:

1st. Mr. Louis le Gardeur de Repentigny, chief of batallion, staff officer of Mr. Leftenant General Evenouf, ancient governor of the island of Guadeloupe, where he died in the year A. D. 1821, intestate and without posterity.

2d. Mr. Theodore le Gardeur de Repentigny, without any profession, residing at Capesterre, Guadeloupe, died intestate and without posterity at the Basseterre, Guadeloupe, on the 1st of July, A. D. 1811.

3d. And Mr. Antoine Camille le Gardeur Chevalier de Repentigny, born at Tours, France, on the 15th July, A. D. 1789.

That the two first named died without posterity, and that their inheritance became the property of the widow Le Gardeur de Repentigny, (born Le Prevost Duquesnel,) their mother, and their nieces hereafter named.

That Mr. Antoine Camille le Gardeur Chevalier de Repentigny, brother of the above named, was married at Guadeloupe on the 19th of April, A. D. 1814, to Miss Marie Anne Toinette Nicole Aimee Gantheaume.

That from this marriage were born four children, viz:

1st. Theodore Rene le Gardeur de Repentigny, who died at four years of age, in the district of Petit Bourg, on the 27th of December, A. D. 1821.

2d. M'elle Lisette Antoinette le Gardeur de Repentigny, married to Mr. Pierre Charles Lucien Murville Bonfils, proprietor, residing together in the district of Petit Bourg, Guadeloupe.

3d. M'elle Josephine Lucrece le Gardeur de Repentigny, married to
68 Cyprien Clavie, administrator of plantation, and proprietor, residing together in the district of Canal, Guadeloupe.

4th. And Miss Louise Pauline le Gardeur de Repentigny, (of age,) residing upon the plantation of her mother at Petit Bourg, Guadeloupe.

That the said Antoine Camille le Gardeur Chevalier de Repentigny died on his plantation, at said Petit Bourg, on the 20th of April, A. D. 1820, leaving for his sole heirs his four children above named.

That one of them, Theodore Rene le Gardeur de Repentigny, who died young as aforesaid, left four sole heirs, viz:

The widow Le Gardeur de Repentigny, (born Gantheaune,) his mother, for one quarter, and the Misses Le Gardeur de Repentigny, his sisters, for the other three quarters.

Finally, that Mrs. La Comtesse de Marchais, who was the heir-at-law of her two sons, Louis and Theodore Le Gardeur de Repentigny, died without leaving any posterity from her second marriage with the Comte de Marchais.

That the death of said lady took place at Courtavenel, France, Canton de Rozoy, arrondissment de Coulommiers, (Seine and Marne,) on the 18th of May, A. D. 1836; that she has made no will, and thus her sole heirs are Mrs. Bonfils, Mrs. Clavie, and Miss Louise Pauline le Gardeur de Repentigny, her granddaughters, above named.

That by the event of the several deaths above mentioned the only persons

who at this day have a right to the concession of the Sault Ste Marie, originally made to Mr. Louis le Gardeur Chevalier Comte de Repentigny, are the following, viz:

1st. The said Mrs. Bonfils, Mrs. Clavie, and Miss Louise Pauline le Gardeur de Repentigny, his grand-granddaughters.

2d. And Mrs. Marie Anne Toinette Nicole Aimie Gantheaume, the wife by first marriage of his grandson Antoine Camille le Gardeur
69 Chevalier de Repentigny, afterwards widow en secondes noces of Mr. Edme Jean Joseph Mignard, health officer, and at present wife by a third marriage of Mr. Pierre Monpezat, proprietor, with whom she resides in the district of Petit Bourg, Guadeloupe.

This present act is made and granted to be used by whomsoever has a right.

Made and passed at Point a Pitre, in our office, on the 13th of March, A. D. 1841, and the persons so appearing have signed with the notaries these presents, after reading, delivered in brevet and in duplicate.

(Signed) FAUJAS DE ST. FOND.
LE CHEVALIER DE BRAGELOUGNE.
VERNON BARON DE BONNEVIL.
D' ESTRELAN.
LE C'TE DE PONTEVES D. AMIRAT.
DE BOUBERS VAUJEANLIEU.
L'S BENOIST.
RIDE.
PRUDEAU.
N. BARBOTTEAU.
JOHAUNETON, and
A. THIONVILLE.
(These two last notaries.)

In margin is written:

Registered at Pointe a Pitre on the 20th March, A. D. 1841, fo. 147, vo. C, 5.

Received 50 centimes. For the receiver—

(Signed) TH'R R. BONNETERRE.

"It is so at the original brevet of the act of notariety relative to the De Repentigny family, annexed to the act of depot whereof the expedition is above, they all being in the possession of Master Thionville, notary undersigned."

(Signed) A. THIONVILLE, *N.*

71 EXHIBIT IX*a*.

Certificate of burial of Louis de Repentigny, chevalier, &c.

Translation.

Extract of the register of death of the parish church of Saint Eustache, Paris.

In the year seventeen hundred eighty-six, on Wednesday, the eleventh October, Mr. Louis Legardeur Chevalier Compte de Repentigny, chevalier of the royal and military order of St. Louis, brigadier of the king's armies, ancient governor general and commandant in chief at Senegal, coast of Africa, and dependencies, aged sixty-five years, deceased the day before yesterday, Montmartre street, was buried at the cemetery in the presence of the witnesses who have signed our minute, (first draught.)

(So signed) DAYMAR-DAYMAR POUPART,
Curate of St. Eustache.

Compared with the original, and delivered by me, priest depositary of the registers of deaths of the said church, at Paris, this 29 October, seventeen hundred eighty-six.

(Signed) POTARD.

73 Exhibit IX, in substance a duplicate of Exhibit IX*a*, and therefore omitted.

75 EXHIBIT X.

Certificate of death of Gaspard.

Translation.

GRANDE TERRE, GUADELOUPE,
Pointe a Pitre, March 20th, 1841.

POINTE A PITRE, *Mayor Office, 2 July*, 1808.

This day, the second of July, one thousand eight hundred and eight, the fifth of the empire of Napoleon, at ten o'clock in the morning, before us, Jean Pierre Certain, officer of the etat civil for the quarter and City Pointe a Pitre, appeared Messrs. Felix Hurel, procureur imperial of the tribunal of first instance of this district, and Louis Charles Hense Chabannes, merchant, both of age and residing in this city, who have declared that Mr. Louis Gaspard le Gardeur de Repentigny, lieutenant de vaisseau, captain of the port of this city, aged fifty-five years, died in the house of Barbeo, on the quay. After this declaration, certified conformable to the truth, reading being made hereof to the appearers, and having assured ourselves of the deceased, have drawn up the present act, which the above declarants have signed with us.

Signed on the register:

HUREL.
CHABANNES.
CERTAIN, *Civil Officer*

77 EXHIBIT XI.

Certificates of marriage of Camille, birth of petitioner Louise Pauline, and death of Louis, jr.

Translation.

Extract from the registers of the acts of the etat civil of the parish of Capesterre, Guadeloupe.

This day, the nineteenth of the month of April, one thousand eight hundred and fourteen, at eleven o'clock in the morning, before us, Sicaire Micard, conservator of the registers of the etat civil of the quarter of Capesterre, parish of Saint Hyacinthe, island of Guadeloupe, appointed in this quality to receive therein the acts of birth, marriage, and death of said quarter conformably to the civil code of the French, which regulate this colony, appeared, to contract marriage, Mr. Antoine Camille le Gardeur de Repentigny, aged twenty-five years, native of Tours, parish of St. Venant, department d'Indre et Loire, proprietor of this quarter, where he resides, son by lawful marriage of the late Mr. Louis Gaspard de Repentigny, ancient chevalier of the royal and military order of St. Louis, captain de vaisseau while living and residing at said place, and of Magdeleine Pauline Marguerite le Prevost Duquesnel, widow Repentigny, domiciled upon her plantation at the same place, his father and mother, acting by these presents under the authority and by the consent of his mother, here present, of the one part, and Miss Marie Antoinette Nicole Aimee Gantheaume, aged seventeen years, native of the island of Martinique, parish and quarter of Lamentin, daughter by lawful marriage of Mr. Paul Gantheaume, lieutenant com-

missary, and of M'de Therese Benoist Gantheaume, her father and mother residing at said quarter upon the plantation "La Source," acting for this present under the authority and by the consent of her father and mother, here present, of the other part, which future married couple were accompanied by the four witness hereafter named, on the part of said husband: by Messrs. Guillaume Phillippe Parfait Pinel Dumanoir, aged fifty-two years, proprietor at said quarter, where he resides upon his plantation of
78 the "Moulin-a-l'Eau," friend, and Amedee Francois Bernard Rousseau, aged twenty-six years, proprietors at the quartier of Goyave, at present here, cousin of said husband, on the part of the future wife; by Messrs. Louis Hurault de Gondrecourt, aged fifty-four years, proprietor and commissary commandant of the said quarter, where he resided upon his plantation "Bois-riant," and Francois Comte de Bonille, aged forty years, proprietor at the quarter at Petit Bourg, at present here, both friends of said wife. Reading having been made to the contracting parties and witnesses of all the documents relative to the said future couple, and of the formalities of their marriage, being seen also the extract of baptism of said husband, which has been presented to us by him, the future wife having not been able to present us hers, she made up the deficiency by an act of notoriety according to the homologative sentence of the tribunal of first instance, sitting at Basseterre. In lieu of the act of notoriety she has just presented to us her act of birth, where it is said that she was born the fourteenth of May, one thousand seven hundred and ninty-six, baptized nine months afterward, at the parish "Des Trois Isles," island of Martinique, by Mr. the curate Theophile Desservant. Together with the acts of the publications made and published the third and tenth instant at eight o'clock in the morning during two Sundays, whereof a copy of said act, which was drawn up, has remained eight days affixed to the principal door of the city hall of said quarter, situated at the bourg of Marigot, and no person having presented himself to oppose said marriage. After having made known to the contracting parties title five, chapter six of the civil code of the French upon the rights and re-
79 spective duties of married persons, after also the contracting parties had declared in a loud and intelligible voice, the one after the other, that they were willing to take each other, the one after the other, mutually, for husband and wife, we have consequently in our said quality proclaimed in the name of the law that they are united by marriage. Of all which we have drawn up the present act on the spot, which is signed by us, the undersigned, by the two persons married, the four witnesses, and the father and mother of the said couple, after reading these presents to them on the day month, year, and hour aforesaid.

Signed on the registers: C. DE REPENTIGNY.
AIMEE GANTHEUME DE REPENTIGNY.
PINEL DU MANO
F. BOUILLE.
A. ROUSSEAU.
LOUIS HURAULT.
GANDRECOURT.
GANTHEAUME.
BENOIST GANTHEAUME.
DUGUENEL REPENTIGNY.
GANTHEAUME, fils.
J'N B'TE PAUVERT.
L'D BENOIST.
SENECAL PAUVERT.
ALIX GANTHEAUME.
And the conservator of the registers,
S'RE MICARD.

True copy.
Capesterre the 18th of March, 1841.
[SEAL.] (Signed) E. ROUBEU, *the Mayor.*

This day, Saturday, the eighteenth of February, one thousand eight hundred and fifteen, at ten o'clock in the morning, before us, Sicaire Micard, conservator of the registers of the etat civil of the quarter of Capesterre, parish of Ste Hyacinthe, island of Guadeloupe, appointed on this quality to receive the acts of birth, marriage, and death of said quarter, conformably to the civil code of the French, which governs this colony, appeared Mr.
80 Antoine Camille le Gardeur de Repentigny, proprietor at said quarter, domiciled, aged twenty-six years, assisted by Messrs. Robert Nau, aged fifty years, and Robert Philippe Giraud de Charbonniere, aged thirty-four years, both habitans, and domiciled at said quarter, witnesses required to be present, who declared to us that his wife, Mad'lle Marie Antoinette Nicole Aimee Gantheaume, was on yesterday, at ten o'clock in the evening, in her house and residence situated on the plantation "Changy," belonging to Madame Marchais, her mother-in-law, delivered of a daughter, the issue of their lawful marriage, to whom was given the christian names of Louise Pauline, according with the declaration which said witnesses certify, conformable to the truth upon the presentation which has been made to us of the above-named infant, and we have thereupon, in presence of the above named, drawn up the present act which is signed by us, the undersigned, by the father of the infant exhibited, and the two witnesses, after the same was read to them, the day, month, year, and hour above mentioned.

Signed on the registers:

C. DE REPENTIGNY.
R. NAU.
GIRAUD CHARBONNIERE.
And the conservator of the registers,
S'RE NICARD.

True copy.
Capesterre, the 18th of March, 1851.
[SEAL.] (Signed) E. ROUBEAU, *the Mayor.*

In the year eighteen hundred and twenty, the fifth of May, at eight o'clock in the morning, before us, Valentin Joseph Caignet, officer of the etat civil of the quarter of Capesterre, island of Guadeloupe, appeared Messrs. Jean Claude Prudeau, aged forty-eight years, habitant, and Jean Bourgouin Valery, aged twenty-nine years, merchant, both residing at said quarter, who have declared to us that on the fourth of the present month, died at the said plantation Changy, at two o'clock in the morning, Mr. Louis Le Gardeur de Repentigny, aged thirty-nine years, chef de bataillon, not in active service, and the said declarants have with us signed the present act the day, month, and year aforesaid after reading.

A correct copy.
Capesterre, 18th of March, 1841.
[SEAL.] E. ROUBEAU, *the Mayor.*

81 EXHIBIT XII.

Certificate of death of Theodore.

Translation.

Extracts of the registers of the acts of the etat civil of the city of Basseterre, island of Guadeloupe.

In the year one thousand eight hundred and eleven, on Monday, the first day of July, at five o'clock in the afternoon, appeared before us Jacques Calbris, curate undersigned, charged with the duties of the office of the etat civil, Messrs. Xavier Auguste de Gondrecourt, aged fifty-three years, member of the court of appeal of this colony, and Francois Auguste Payen, aged thirty-three years, assessor at said court, both proprietors of the parish of Capesterre, who have declared to us that M. Theodore de Repentigny, aged twenty-five years, native and resident of the parish above mentioned, died this day, at nine o'clock in the morning, in this city, parish Saint Francois, house No. —, situated on Penthievre street, which he come to live in on account of sickness, and the said gentlemen signed with us the present act after reading.

Signed on the register: X. A. GONDRECOURT.
A. PAYEN, and
JS. CALBRIS, *Curate.*

Compared copy.

BASSETERRE, *the twenty-sixth of March*, 1841.

The assistant mayor appointed to the duties of officer of the etat civil.
(Signed) ATE. VATABLE.

84 EXHIBIT XIII.

Certificate of baptism of Camille.

Translation.

Extract from the registers of the parish church of St. Venant, reunited to that of St. Martin, of the city of Tours.

July sixteenth, 1789, was by me, the undersigned, curate, baptised Antoine Camille, born yesterday, the son of Mr. Louis Gaspard Le Gardeur Comte de Repentigny, chevalier of the royal and military order of St. Louis, and officer of the marine, and of Madam Magdeleine Pauline Marguerite le Prevost Duquesnel, his lawful wife; the Sieur Theodore Le Gardeur Chevalier de Repentigny, brother of the baptised, was the god-father, represented by M. Antoine Gilles Landrieves Desbordes, second cousin of the baptised, parish of St. Vincent; the godmother, Mad'l Marguerite Francoise le Prevots Duquesnel, wife of Mr. Milliou, Count de Genonilly, chevalier of St. Louis and of St. Cincinnatus, chef d'escadre, his aunt, residing at Montargis, represented by Madam Madeline Pauline Francoise Hurault de Ligny, countess des Cornays, his second cousin, of this parish, who have signed with us, and also the father present, and the representative.

(Signed) HURAULT DE LIGNY,
CHEL'R DES CORNAYS,
DE LANDRIEVES DES BORDES,
LE GARDEUR COMTE DE REPENTIGNY,
and CUIMIU, *Curate M. de St. Venant.*

Compared with the original, and certified true, at Tours, the fourth of May, 1792.

Changed in the word "Cincinnatus," approved.
(Signed) GRIGNON, *Cure de St. Martin.*

85 EXHIBIT XIV.

Certificates of death of Camille; births of petitioners Lizette Antoinette and Josephine Lucrece; and birth and death of Theodore Rena.

Translation.

Extract from the registers of the acts of the etat civil of the parish of Petit Bourg, island of Guadeloupe.

In the year eighteen hundred and twenty, and the first of April, at ten o'clock in the morning, before us, J'n Luc Descombes, officer of the etat civil of the quarters of the Goyave and of Petit Bourg, appeared Mr. Leonard Sarragot, of age, proprietor at Petit Bourg, who, assisted by Messrs. Gantheaume and Benoist, both of age, and proprietors at said quarter, and declared to us that this morning, between seven and eight o'clock, Mr. Camille le Gardeur de Repentigny, aged thirty years, and proprietor at Petit Bourg, and brother-in-law of the declarant, died upon his plantation.

The death above mentioned, duly attested by our presence upon the spot, and by the testimony of Mr. Gantheaume, father-in-law, and of Mr. Benoist, brother-in-law of the deceased, we have instantly drawn up the present act, which has been read to the declarant and to the witnesses, they have signed with us, civil officer, to the three registers the day, month, and year above mentioned.

Signed upon the registers: LD. SARRAGOT,
GANTHEAUME,
BENOIST, and
DESCOMBES, *Civil Officer.*

86 Extract from the registers of the acts of the etat civil of the parish of Petit Bourg, island of Guadeloupe.

In the year one thousand eight hundred and sixteen, on Monday, the nineteenth of the month of August, at three o'clock in the afternoon, appeared in the office of the etat civil of the parishes of Goyave and Petit Bourg, department of Guadeloupe, Mr. Le Chevelier Camille le Gardeur de Repentigny, proprietor, residing in the parish of said Petit Bourg, of age, who, assisted by Messrs. Charles Nicolas Marie Janore de Sestortiere and Paul Gantheaume, both of age, the first proprietor in the parish of Sainte Anne, Petite Goyave, and the second proprietor in that of Petit Bourg, in the said island, declared that his legitimate wife, Aimee Nicole Antoinette Gantheaume, was delivered, on Wednesday, third of July last, present year, about four o'clock afternoon, in his residence upon his plantation above mentioned, of a child of the female sex, to which child has been given the names and christian names of Lizette Antoinette. The birth above mentioned having been established by the testimony of the two persons assisting, the sieur declaring, and by the presentation which has been made to us of the child above named, we, Jean Francois de Lagarde, conservator of the registers of the acts of the etat civil for the parishes above mentioned, have drawn up the present act, which has been transcribed and signed upon the two registers by the requirant, the witnesses, and ourselves, after reading, the said day and year above mentioned, of which this is the act.

Signed on the register: J'VRE DE LESTORTIERE,
GANTHEAUME FILS, and
J. F. DE LAGARDE.

87 Extract of the registers of the acts of the etat civil for the parish of Petit Bourg, island of Guadeloupe.

In the year one thousand eight hundred and eighteen, and the third of May, appeared before us, J'n Luc Descombes, officer of the etat civil for the quarters of Goyave and of Petit Bourg, Mr. Camille Le Gardeur de Repentigny, of age, and proprietor of the quarter of Petit Bourg, born in France, who, assisted by Messrs. Moreau and Dupre, proprietors, neighbors of Mr. Camille, has declared to us, and the said witnesses have attested, that on the thirtieth of last month, Madame Antoinette Nicole Gantheaume, his wife, was delivered of a male child, to whom has been given the christian names of Theodore Rene; the said child having been presented to us, and being well known by the witnesses above mentioned to be the one in question, we, civil officer, have drawn up the present act, which has been read to the declarant and to the witnesses, they having signed with us on the two registers, the day and year above mentioned.

Signed on the registers: C. DE REPENTIGNY,
STE. MOREAU,
DUPRE, and
DESCOMBES, *Civil Officer.*

88 Extract from the registers of the acts of the etat civil of the parish of Petit Bourg, island of Guadeloupe.

In the year one thousand eight hundred and twenty-two, and the twenty-second of February, at four o'clock afternoon, before us, Saint Victor D'Orniere, officer of the etat civil of the quarters of Petit Bourg and Goyave, island of Guadeloupe, appeared in our office the Sieur Gantheaume, proprietor in the parish of Petit Bourg, assisted by the Sieurs Jean Baptiste Lorger and Leonard Sarragot, proprietors in the said parish of Petit Bourg, both of age, who have declared to us that, on the twenty-seventh December last, died, at eleven o'clock precisely, in the morning, Theodore, aged four years, son issue from the legitimate marriage of the late Sieur Antoine Camille Legardeur de Repentigny and of Lady Therize Aimee Gantheaume, his wife, proprietor in the parish of Petit Bourg. The death above mentioned being duly established by the testimony of said declarants and said witnesses, we have drawn up the present act, which the parties have signed with us, officer of the etat civil, on the three registers, after reading, the day, month, and year above mentioned.

Signed on the registers: GANTHEAUME,
J. B'TE LORGER,
LEONARD SARRAGOT, and
ST. VICTOR D'ORNIERE.

89 Extract from the registers of the acts of the etat civil of the parish of Petit Bourg, island of Guadeloupe.

In the year one thousand eight hundred and nineteen, and the sixteenth of the month of November, at noon, before us, J'n Luc Descombes, officer of the etat civil for the quarters of Goyave and Petit Bourg, appeared Mr. Camille Le Gardeur de Repentigny, of age, and proprietor of Petit Bourg, who, assisted by Messrs. Panvert Martiniere and Leonard Sarragot, both of age, his relatives and neighbors, has declared to us, and the witnesses have attested, that yesterday, the fifteenth instant, at eleven o'clock in the morning, Mrs. Antoinette Nicole Gantheaume, his wife, of age, native of Martinique, was delivered of a daughter, to whom has been given the christian names of Josephine Lucrece. The birth of said child being duly established, by

the presentation made to us of the child, we have drawn up the present act, which has been read to the sieur declarant and to Messrs. the witnesses, they have signed with us, civil officer, on the three registers, the day, month, and year above mentioned.

Signed on the registers: C. DE REPENTIGNY,
LD. SARRAGOT, and
DESCOMBES, *Civil Officer.*

91 EXHIBIT XXVI*a*.

Captain's commission of the Sieur de Repentigny in 1693.

Translation.

By the king.

His majesty being informed that the Sieur le Gardeur de Repentigny has up to the present time well acquitted himself in his employment as a half-pay captain, which was given him in the year 1692 in the place of the late Sieur de Susignan by the Sieur Comte de Frontenac, governor, and his lieutenant general in Canada, according to the power which his majesty gave him, and wishing him to continue to serve him in the said quality of half-pay captain, command the said Comte de Frontenac to have him recognized in the said quality by all persons whom it may concern, from the day he is established in said employment.

Done at Versailles the 1st of March, 1693.

(Signed) LOUIS.
(Signed) PHELYPEAUX.

93 EXHIBIT XXVII.

Certificate of baptism of Jean B. R. de Repentigny, 1695.

Translation.

Extracts from the register of baptisms, marriages, and burials of the parish of Montreal, in Canada.

The fifteenth of the month of June, in the year one thousand six hundred and ninety-five, was baptised Jean Baptiste Rene, son of Pierre le Gardeur, lieutenant of the detachment of the marine, and Agatha St. Pierre, his wife. The godfather was Jean Baptist le Gardeur Sieur de St. Pierre, officer in the troops; the godmother was Louise Bisot, wife of M. de la Voltrie, captain, who held the child in the name of M'lle Marguerite Denis.

(Signed) REPENTIGNY FILS.
(Signed) ST PIERRE.
(Signed) LOUISE BISOT.
(Signed) M. CAILLE, *Vicar.*

95 EXHIBIT XXVIII.

Certificate of baptism of Marie C. Tuchereau, 1693.

Translation.

Extract from the register of baptisms, marriages, and burials of the parish of Montreal, in Canada.

The twenty-third of September, one thousand six hundred and ninety-three, was baptised Marie Catharine, daughter of the Sieur Charles Tuchereau, esquire, lieutenant of a company of a detachment of the marine, and of Catherine Migeon, his wife; was named by Sieur Pierre le Gardeur, es-

quire, counsellor of the sovereign council of Quebec, and the said Catherine Gauchet.

(Signed) LE GARDEUR.
(Signed) C. GAUCHET.
(Signed) GUIOTTE, *Curate.*

97 EXHIBIT XXIX.

Certificate of marriage of Jean B. R., 1718.

Translation.

Extract from the registers of the acts of baptism, marriage, and burials of the parish of Montreal, in Canada.

The twenty-fourth of July, in the year 1718, after publication of a ban, (a dispensation of the two others having been granted by my lord Belmont, grand vicar of my lord the bishop of Quebec,) and no hindrance being discovered, I, the undersigned, priest of the parish de Ville Marie, having obtained the mutual consent of M. Jean Baptiste le Gardeur, esquire, ensign in the troops of the detachment of the marine, aged twenty-three years, son of M. Pierre le Gardeur, esquire, Seigneur de Repentigny, captain of a company of the detachment of the marine, and the lady Agathe St. Pierre, his father and mother, of one part, and of Demoiselle Marie Catherine Tuchereau, aged twenty-four years, daughter of the late Charles Tuchereau de St. Denis, esquire, counsellor of the king and lieutenant general of the jurisdiction royale of Montreal, and lady Catherine Migeon de Beaujeu, her father and mother, of the other part, having married them in the presence of M. le Gardeur, esquire, Sieur de St. Pierre, captain of a company of the detachment of the marine, de M. Louis Sieur, de Beaujeu, also a captain, and of M. Daniel Migeon, esquire, Sieur de la Gauchetiere, lieutenant aid major of the troops of the detachment of marine, undersigned. Thus signed: Jean Baptiste de Repentigny; Maria Catherine Tuchereau; Le Gardeur de Repentigny; St. Pierre; Agathe St. Pierre; Lucien de Beaujeu; Migeon de la Gauchetiere; Migeon de Beaujeu; de Lestringand des Marines; Agathe Repentigny Vandreuil; Maria Catherine le Gardeur de Ramzay; M. C. de Ramzay; Lonqueil; Elizabeth Fouar; Tuchereau de St. Martin Dumuy; De Repentigny; Dechaillon; Marie de Montileon; A. Rabutel; De Liguery; Dantinil; Agathe St. Pierre de Repentigny; Magdeleine de St. Martin; Senneville; Cavagual; De Vandraiel; Rangeau, priest performing the functions of curate.

99 EXHIBIT XXX.

Petition of Jean B. to the king.

Translation.

To the king:

SIRE: Very humbly implores your majesty, Jean Baptiste le Gardeur, esquire, Sieur de Repentigny, near Caen, and represents, with a profound respect for your majesty, that having passed into his country of New France at the age of six years with his late father, the first of the gentlemen who went there to dwell, with all his family, having carried thither all his property, of the value of nearly one hundred thousand francs, which he employed to improve the country and in divers establishments which, since his death, your petitioner has continued, and being married to a young lady, a native of the country, has eleven living boys by her, of whom five are old enough to bear arms for your majesty's service, as your petitioner has done on all occasions of war in which he has taken part for the defence of the country against the Iroquois during forty-five years that he has been there.

This being considered, sire, and that a gentleman who has eleven children has more difficulty to subsist and employ them in that country which has been without war for ten years than the other inhabitants, who are artisans or who cultivate the earth, may it please your majesty to bestow the effects of your liberal bounty upon your petitioner, in order to give him the means of supporting his family, with which he will feel more obliged to continue his vows and his prayers for the prosperity and health of your majesty.

(Signed) REPENTIGNY.

101 EXHIBIT XXXI.

Grant of royal pension to Jean B., 1702.

Translation.

On this day, the month of April, one thousand seven hundred and two, the king being at Versailles, his majesty being informed that the Sieur de Repentigny, the father, half-pay captain in New France, is no longer able to continue his services to his majesty, and his majesty being willing to grant him proofs of his satisfaction, has granted him and made him a gift of six hundred livres annually, which he orders to be paid during his life, upon his simple receipts by his royal treasurers present and future, to commence from this day, and in testimony of his will, his majesty has commanded me to forward this present decree, which he has signed with his own hand, and to be countersigned by me, consellor, secretary of state and of his orders and finances.

(Signed) LOUIS.
(Signed) PHELYPEAUX.

103 EXHIBIT XXXII.

Order for letters of emancipation from minority of Louis (Chevalier,) 1743.

Translation.

Extract from the registers of the superior council of Quebec.

Considering the request presented this day in this council by Louis le Gardeur de Repentigny, esquire, showing that he being in the twenty-first year of his age, and desirous to enjoy the income of his real estate and to have free disposal of his personal property under the authority of a curator *aux causes*, concluding in his said request that it may please the council to grant to him letters of emancipation and enjoyment d'age, addresses to the lieutenant general of the jurisdiction of Montreal for the period after the interim, to enjoy the effect thereof, having heard the procurem general of the king, the council has ordered and doth order that by the register-in-chief of this council there shall be drawn up for the Sieur de Repentigny letters of emancipation and enjoyment d'age, addressed to the governor general of the royal jurisdiction of Montreal, to be ratified if it be proper.

Done at Quebec, in the superior council, on Monday, the second of October, one thousand seven hundred and forty-one.

(Signed) DAINE.

105 EXHIBIT XXXIII.

Letters of emancipation from minority, 1741.

Translation.

Louis, by the grace of God king of France and Navarre, to our lieutenant general of the royal jurisdiction of Montreal, greeting: Our well beloved Louis le Gardeur de Repentigny has made known to us that having now

attained the age of twenty-one years or thereabouts, and having always well demeaned himself, he is capable of enjoying the property which has fallen to him as well by the death of his father and mother as by the death of his paternal grandfather, if it pleases us to grant him our letters upon this necessity point. For these reasons being favorably disposed to treat the said applicant, we command you that, his parents as well paternal as maternal being called before you, if it shall appear to you that said applicant has attained the age of twenty-one years, that he is capable to control and govern his property and revenues, in that case with the consent of the said parents, you permit him to enjoy his movable property and the revenue of his real estate, as fully as if he was at the age of majority, impowering him and dispensing him so to do. On the condition, however, that he shall not sell, alienate, nor mortgage his real estate until he has attained the age of twenty-five years, under pain of nullity, for such is our pleasure.

Given at Quebec, in our superior council, the second of October, in the year of grace one thousand seven hundred and forty-one, and of our reign the twenty-sixth.

By the council.

(Signed) DAINE.

107 EXHIBIT XXXIV.

Receipt in full from Agathe to Louis (Chevalier,) 1743.

Translation.

I have discharged and acquitted my grandson, the Chevalier de Repentigny, of all he has received in my signiories during the year seventeen hundred and forty-one and seventeen hundred and forty-two, so that no person may, directly or indirectly, demand any account thereof from him.

Done at Quebec, the 10th of January, one thousand seven hundred and forty-three.

(Signed) AGATHE, *widow of the grandfather de Repentigny.*

On this day before the royal notaries of the jurisdiction of Montreal there residing, undersigned, appeared Louis le Gardeur, esquire, Chevalier de Repentigny, an officer of a company of troops from a detachment of the marine, who deposited in the office of Adhemar, one of the said notaries, the acquittance above transcribed, to be placed in the files of his minutes, and copies thereof to be delivered to whom it may concern, of which he has asked us to give him a copy.

Done and passed at said Montreal, at the office of the said Adhemar, where the minute of these presents remains, the thirteenth of July, in the year seventeen hundred and forty-three, afternoon, and the said Sieur de Repentigny has signed with the said notaries after reading.

Thus signed upon the minute of these presents.

(Signed) CHEVALIER DE REPENTIGNY.
(Signed) H. SIMONNEL and ADHEMAR, notaries with parraphe.
(Signed) ADHEMAR.

109 EXHIBIT XXXV.

Military order to Louis.

Translation.

Charles Marquis de Beauharnois, commander of the royal and military order of St. Louis, chef d'escadre of the naval forces of his majesty, governor and lieutenant general for the king throughout New France and the lands and countries of Louisiana.

It is ordered that the Sieur Chevalier de Repentigny, an ensign of the troops of this country, leave the city of Montreal immediately and repair to the port of Niagara, where he is to serve until further orders, instead of the Sieur de Celoron, junior, whom we have relieved, and under the command of the Sieur de la Gauchetierre.

Done at Quebec, May 5, 1746.

(Signed) BEAUHARNOIS.

111 EXHIBIT XXXVI.

Military order to Louis, 1748.

Translation.

Rolland Michel Barrin, Chevalier Marquis de La Galissionere, chevalier of the royal and military order of St. Louis, captain des vaissaux of the king, commandant general for his majesty throughout New France and the lands and countries of Louisiana.

The Sieur Chevalier de Repentigny, ensign of foot, is ordered to go to the war upon the territories of New England with the party of French and Indians of whom we have given him the command. He is commanded to treat the prisoners he may be able to make with humanity, and to engage the Indians to do the same thing.

Montreal, July 11, 1748.

(Signed) L'A GALLISSONIERE.

(Signed) By my lord PILLIAMET.

On the other page is the following:

"Equipment of the 80 savages: 80 muskets; 80 bragets, (breech clouts;) 80 pairs of metaffes, (a kind of mitten;) 100 deer skins; 8 lbs. vermillion; 80 woodcutters' knives; 80 lbs. of powder; 80 lbs. of balls; 80 lbs. of lead shot; 80 collars for carrying; 80 awls; 80 batteux, (tomahawks;) 400 musket flints; 80 powder horns; 100 needles; 3 lbs. thread; 80 cas-
112 settes, (small boxes;) 8 axes; 4 pair scissors; 80 lbs. tobacco; 8 iron cooking pots; 8 canoes.

For thirteen days' provisions as far as St. Frederick.

Two Iroquois who have joined the party have had the same thing.

Twenty-six Canadians have also been equipped, and this party have received provisions as far as St. Frederick.

Thirty-three Nipissing Indians and Algonquins have been equipped in the same manner, and have received six muskets.

113 EXHIBIT XXXVII.

Military order to Louis, 1753.

Translation.

Le Marquis Dugnese, chevalier, of the royal and military order of St. Louis, captain of the vessels of his majesty governor and lieutenat general for the king in all New France, and in the lands and countries of Louisiana.

It is ordered to the Chev'r de Repentigny, officer of the troops of this colony, to start as soon as the present order is received to proceed from the island of Jesus, Lachesnaye, Terrebonne, and Askouthe as far as to L. Assomption, and there take the command of all voyageurs found in the militia companies without exception of any one, the king having need of them for his service.

He will cause to be presented the levy-roll which was heretofore made by the major officer charged with our orders, and he will add thereto the voya-

geurs who have not been commanded and who, like others, will hold themselves in readiness to start at the first order.

We enjoin upon the Sieu'r de Repentigny to bring to us all the captains and officers of companies who shall be convicted of seeking to conceal a voyageur.

Done at Montreal, the 30th of March, 1753.

(Signed) DUQUESNE.

115 EXHIBIT XXXVIII.

Letter from Duquesne to Louis, 1754.

Translation.

MONTREAL, 24*th April*, 1754.

I received sir, in due time the five letters which you wrote me dated June 20th, 2d and 3d of July, the 13th of August, and the 1st of October, of last year. I learn with pleasure your safe arrival on the 41st day after your departure, notwithsanding all the obstacles you found on your journey, and which we here foresaw would be difficult to surmount on account of high water. I was not less satisfied to learn that all was quiet at your post. You have conducted yourself and have talked in the best manner to the Indians of your post, and you will act in the same manner in all like cases, for it is important for the good of trade to prevent the murders of which they are capable. I am much pleased to see that you employ all your care to get back the necklace of the English , which is in the hands of the Indian called Wabissioine; I hope that you will succeed in it, and make that savage understand how much his conduct displeases me. Prevent them as much as you can from going among the English; but if you cannot do this, pretend to be ignorant or testify to them my dissatisfaction. Upon your assurance of the fidelity of the Indian called Tegwagane, I send you a medal for that chief, and hope this distinction will attach him the more, but I assure you that I am not in the mood by any means to multiply them. Besides the private advantages which will accrue to you from the care which you are taking for the cultivation of your lands, the government will be very thankful to you. I exhort you to devote yourself wholly to it on account of the interest which I take in you. I saw last year the Sault chiefs (Saulteux de) Fhagwamegou, who came to offer me their bodies in place of the murderers whom they had not been able to join. I told them that this satisfaction was not sufficient, as I never punish the innocent for the guilty, but if they were not brought to me this time they should feel the effects of my anger. I am sorry for the accident which happened to your canoes. You will see, by my prompt forwarding of the two canoes you have *have* asked for, my inclination to favor you. I knew before the reception of your letter of the
116 1st of October, of the death of Clon, a La Pointe chief, whom I had received with distinction, and I cannot accustom myself to these treacheries frequent though they are on this continent.

As I contemplate sending a detachment to Missilima Kinac, I notify you that the Sieur Peau has been ordered to relieve your garrison, and to replace it with the same number. Your soldiers have asked of me the privilege of returning. I cannot conceive how marrying with the Indian women can be permitted, and if any one shall now take this into his head he will greatly expose himself. Madame de Repentigny is here to look after your affairs, and they say that she understand them extremely well. All I can say is that you have in this lady a very good and very amiable advocate. Continue to keep me informed of what is passing at your post and the progress of the cultivation of the land of which I shall make proper use.

I have the honor to be, perfectly, sir, your humble and very obedient servant,

(Signed) DUQUESNE.

Mr. De Repentigny, *Comd'r au Sault Ste Marie.*

The original is indorsed as follows: "Speak to him about a necklace brought here this summer from the Iroquois by a Mississippi, who had been to war with the"—[illegible.]

117 Exhibit XXXIX in substance another duplicate of Exhibit IXa above, and is therefore omitted.

119 Exhibit XI.

Genealogy of the De Repentigny family to 1820.

Translation.

Genealogy of the family Le Gardeur de Repentigny, originating in Normandy.

1st. Pierre Le Gardeur, esquire, Seigneur de Repentigny, married in Canada, to Miss Agathe de St. Pere, deceased at Montreal in Canada, on the 18th of November, 1736, aged 80 years; Chevalier of St. Louis, captain of a company of a detachment of marine, buried the next day in the church of that city.

2d. Jean Baptist Rene le Gardeur de Repentigny, born of the marriage of foregoing persons the 15th of June, 1695; married the 24th of July, 1718, to Miss Marie Catherine Tucheveau de St. Denis, born at Montreal (New France) the 23d of September, 1693.

3d. Louis le Gardeur Comte de Repentigny, chevalier of St. Louis, brigadier of the king's armies, ancient governor general and commandant in chief at Senegal, (coast of Africa, and dependencies,) born in Canada, of the marriage of Jean Baptist with Marie Catherine Tucheveau, designated under the above No. 2. He bore in Canada, before the title of comte, that of chevalier, his eldest brother Pierre being not yet deceased. He ask for and obtained in 1750, conjointly with M. de Bonne, the concession of six leagues square at the place called Sault Ste Marie in Canada, (New France) married to Miss Marie Magdelein Chaussegros de Levy; deceased at Paris, the 9th of October, 1786, aged 65 years.

4th. Louis Gaspard le Gardeur comte de Repentigny, captain de vaisseau of the royal navy and chevalier of St. Louis, only son of Louis and of the lady Marie Magdeleine Chaussegros de Levy; born at Quebec, (New France,) the 10th of July, 1753; married the 9th of December, 1780, to Miss Madeleine Pauline Marguerite le Prevost Duquesnel, who by a second marriage became the wife of the Comte de Marchais.

5th. From the marriage of said Louis Gaspard and Madeleine Pauline Marguerite le Prevost Duquesnel were born three children. Louis
120 le Gardeur de Repentigny, deceased at Capesterre, Guadelope, the 5th of May, 1820. Theodore died at Basseterre the 1st July, 1811. Theodore le Gardeur de Repentigny, born the 15th June, 1786, at Capesterre, both deceased without posterity. And Antoine Camille le Gardeur Chevalier de Repentigny, born at Tours, the 15th July, 1789; married at Guadeloupe the 19th of April, 1814, to Miss Marie Anne Toinette nicole Aimee de Gantheaume; deceased at Petit Bourg the 1st of April 1820, leaving four children from this marriage, who are—

6th. Theodore Reve de Repentigny, deceased without posterity; Lisette Antoinette le Gardeur de Repentigny, married to Pierre Charles Lucien Murville Bonfils, proprietor at Petit Bourg, Gaudeloupe; Louise Pauline le Gardeur de Repentigny of age, and Josephine le Gardeur de Repentigny, wife of Cyprien Clavie, overseer of plantation at the Canal, Guadeloupe.

121 EXHIBIT XLI.

Copy of memorandum without date by Repentigny as to communications with M. Mercadier and others, and copy letter from the Comte de Marchais to M. Sarragot 4th Sept., 1836.

Translation.

Memorandum, supposed to have been written by Louis Gaspard Le Gardeur Repentigny.

I have been alarmed about the formality which it is said exists, which is that of the extinction of the Indian title. I think that by the donation of this concession I am relieved of all incumbrances, (finances,) which the king released on the ratification of the concession.

The United States being in place of the king who has conceded, has contracted the same obligations towards the grantees; that government has consequently nothing to claim.

I had knowledge of this property, or at least of its value only in 1796. An Englishman came to me at Fort Royal and proposed to me to buy it. I thought it was not wise to sell an object that I did know, to a person whose proposition induces me to believe that he did know the value of it. I declined to accept. A short time after this Mr. Lavigne, ancient officer of the regiment of Martinique, returning from New York, told me that I was proprietor of a concession of great importance in New England, that the original title was registered under the seal, or at the chancelleire, that this formality has been fulfiled by a Mr. James Caldwell, joint owner with me, from the purchase that he had made of the half of the concession from Mr. De Bonne, who had had it of his father.

Mr. Lavigne advises me not to neglect this affair, and excites me by the prospect of a great benefit in the future, if my position would permit me to wait. He indicates to me Mr. Mercadier, formerly a notary at Gaude-
122 loupe, who had promised to take charge of my interests, and to take care of them if I should place them in his hands. I wrote to Mr. Mercadier; I prayed him to fulfil for me all the formalities which would without trouble assure me my property, and in case a buyer presented himself, to judge of his responsibility and guide me upon what I would have to do, adding that my situation though out of Guadeloupe did not allow to me heavy sacrifices. In 1798 Mons'r Mercadier advised me that Mr. James Caldwell became coproprietor by the acquisition of the half of Mr. De Bonne, and was proposing to buy the other half, offering me 8,100 dollars in different payments. I was dissuaded by some person from accepting this proposition. Mr. Mercadier wrote me that it was necessary to prove by an act before a notary that I was the only heir-at-law of the Chevalier de Repentigny, named in the concession, and to send a power of attorney in which I was with Mad. De Repentigny to grant a power to sell.

I did send to Mr. Mercadier the documents he asked me, and a copy of the concession and of the brevet of ratification, praying him to have the whole registered at the office of New York if it was not yet done.

In 1801, Mons'r Mercadier announced to me his departure for France; I asked him to remit to the Viscounte of Orleans, ancient officer of the navy, my papers, and gave him all the instructions which would enable him to follow my interests.

A short time after the Viscounte of Orleans left New England he remitted my papers to Mr. James Constable, merchant, and advised me to give him my confidence without reservation.

On the 15th of September, 1802, Mr. Constable instructed me of
123 the remittance which had been made to him by the Viscounte of Orleans, of my papers, that he was taking charge of them with pleasure at the recommendation of our mutual friend; he added that it was

necessary for me to send him a power of attorney, of which he sent me a model.

In 1806 I received a letter from Mr. La Garreme, ancient gasde du corps, retired in New England, who proposed to take charge of my power of attorney with the obligation to acknowledge to him a commission of 10 per cent. if the concession was of 200,000 acres, and of 20 per cent. if it was, only the half, meancing me with losing all my rights if I did not hasten to fulfil the formality for the extinction of the Indian title, which formality he added, was difficult to fulfil, for which it needed somebody who had a great deal of protection, influence, shrewdness, and perseverance.

Being alarmed by Mr. La Garemes' letter, I spoke of it to Mr. Ernouf, who took charge of the success by sending my papers to Mr. Thurot, ambassador, asking him to have the formalities fulfiled and remove all the difficulties, if they existed. General Thurot received the letter from Mr. Ernouf; Mons'r Druihlet was charged by the captain general to solicit the ambassador not to lose sight of this affair. I am inclined to think that Mr. Thurot's influence will be sufficient to remove all the difficulties presented by Mr. La Gardune.

Mons. Constable in his letter dated September 15th, 1802, in contemplating the future gave me, however, more hope than Mons'r La Garenne, who in asking of me my power of attorney depreciated this concession by his distant prospect, &c., &c. Mons. Constable, I think is more consoling in telling me that there are upon or near this concession some buildings and
124 fur establishments, but that which gives me more hope, and that which make me attach to it most importance, is the information which, twelve years ago, was sought as to my existence and the place of my residence; such were the propositions made to me, by the co-proprietor Caldwell, and those which have just been addressed to me by Mr. Le Garenne, to give him my power and a commission of 10 or 20 per cent. according the extent of the land and reserving to himself the faculty to take his commission in kind at his choice. I din't kown Mr. La Garenne; I never had any relation with, nothing can interest him in my favor, and it is not usual to canvass for the charge of an object of a small value which the commission, on which would not be adequate remuneration for the cares and pains to be taken. Mr. Budan, sen., has it may be pushed too far (and I believe it) the advantages that he promised me at the time of the peace was when it must happen that speculations shall take another direction. But it seems to me that the situation of this concession, favorable to the fur trade, must give it some value, being between three lakes. If Mons'r Rezeville has any time to devote to this business, the informations which he will obtain and his opinion as to the course I ought to take, will fix my determination. A sale for cash at a price proportioned to the advantages which this property presents, will decide me. Mr. Mercadier who has had the management of this business will be able to put Mr. Rezeville in the right way and to avert from him the trouble of the first researches. If he has occasion to see Mr. Druilhet, and if he thinks that the extinction of the Indian title obligatory upon me, he will render me a service by informing him of the importance of urging Mr. Thurot to cause this formality to be fulfiled.

(Signed) REPENTIGNY.

125 *Translation of a letter from Mr. Le Count de Marchais to Mr. Sarrogot of Petit Bourg, Guadeloupe, (who married one Miss Gantheaume, who was a sister of Mad. Antonie Carrille de Repentigny.)*

COURTAVE, *September* 4th, 1836.

SIR: There are recollections which are always preserved, they are those

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COURTAVE, *September* 4th, 1836.

SIR: There are recollections which are always preserved, they are those

which please, those I have not forgotten, the pleasant moments I passed with you and which you kindly recalled in the letter which you did me the honor to write me on the fifteenth of June last. Do not doubt, I beg you, the pleasure I had in finding them and which I shall have in seeing you again if any occasion should bring you to France.

Mr. Lanvin, at my request, has informed Madam Mignard of the death of my respected wife, which happened on the 18th of May last. This painful loss while it agonizes my heart, plunges me into an isolation and spreads around me a void, which nothing henceforth can fill. There is no greater calamity than to be separated forever from the beings who constitute the charm and the happiness of our lives. May you, sir, never feel it! Separated in respect to property from Mad. de Marchais, after her death I set seals upon the effects she left, their value would be absorbed by the expenses of her last sickness and other expenses. But my intention is to send them to her grandchildren, so soon as Mr. Lanoin shall have received the power which he has asked of them to represent them at the breaking of the seal. I shall proceed to that operation, and as soon after as possible I shall send to them all that Mad. de Marchais was able to leave. By my marriage
126 contract I have a child's portion in her succession, but the debts which incumber it, render this advantage illusory, meanwhile being a creditor for considerable sums out of the common property owned by her with Mr. De Repentigny, it may be possible by means of some formalities for me to be considered as an *actif* of the succession of my wife. The lands in Canada of which she possessed a part in full property as heir for one quarter of her sons, Louis and Theodore Repentigny, but although a creditor myself of Mad. de Marchais to the amount of more than 80,000 francs, a credit which rests upon authentic titles and in part anciently hypothecated upon the plantation "Chaingy." I am far from seeking to participate in the advantages which her grandchildren may derive from the lands in Canada. Everything which respects, everything which belong to my excellent wife, will ever be infinitely dear; to pay the debts of her heart will be for me not only a duty, but a real enjoyment which I shall not neglect to seize. This is saying to you that I shall concur so far as shall be possible for me in the well-being of her grandchildren, whom I consider as my own.

127 You are aware of the letter which was addressed to me by Mr. Odin, a missionary priest of distinguished merit, who lives at the seminary of St. Mary, Perry County, in the State of Missouri. No one can turn to better account than he the lands belonging to the succession of M. De Repentigny. The sacred character with which he is clothed, the great reputation which he enjoys, which, inspiring confidence, guarantee his honesty. It is a great pleasure when one is sure of not being deceived by the persons trusted with one's interest. As for me, I would leave it entirely to Mr. Odin as to the manner of managing those of the grandchildren of my wife in the way which you will have observed in the letter which he wrote to me. He gives us to understand that in adopting the course which he suggests is the best to dispose of the property of the Sault St. Marie, some time will be required to negotiate to advantage. This business, which is really serious and very important, should, if I mistake not, produce great results.

I see by your letter that in order to serve your nieces, you are about to volunteer making a voyage to the United States. You cannot give them a better proof of your interest and attachment. I concert with M.
128 Odin, you can occupy yourself with the sale of their lands, watch the details of the business, and even direct them if you have time and opportunity for doing so. Then there will be no fear of delay or bad faith on the part of the person whom M. Odin puts in charge of the business.

I approve very much of the idea you suggest of reserving for them a portion of these lands. There is no doubt that at a more remote period they will rise in value, and in any case, as you say, will they afford a retreat in case of need. * * * * * * * *

I endeavored to procure the title deed of the concession of the Sault Ste Marie, and I have at last succeeded in obtaining it. It was sent to me the 3d April, 1834, by the master of bequests, director of the colonies. In order to have exact and certain information as to the value of this property, and also the profit derivable from it, I wrote, the 19th Nov. last, to the Duke de Broglie, then minister of foreign affairs, and begged him to get this information from the French consul nearest to the Sault Ste Marie. By his reply of 3d Dec. following, he informs me that he had put in progress the inquiries which I addressed to him, and as soon as he should be apprised of the results he would communicate them to me. * * * *

129 I shall immediately write to Mr. Odin and urge him to grant to the minors De Repentigny the interest that he is disposed to testify to me. I shall speak to him of you also in the letter which I shall address to him, of the bonds which unite you to the grandchildren of my wife, and of the good offices you are disposed to render them, and I shall engage him to correspond with you if you judge it proper to write him. I have made an explanatory note respecting the concession of the Sault Ste Marie, in which there is some useful information. I will address it to you if you desire, as well as the title deed of this property. Its extent is considerable. It has six leagues in front upon the portage and six leagues in depth. It was conceded by Louis XV to Messieurs De Repentigny and De Bonne. The latter many years ago sold his portion to Mr. James Caldwell, of Albany. This circumstance being well cleared up, should aid powerfully in the recognition of the locality, which is an important point touching the projected sale. * * * *

I shall feel great consolation if the children of a worthy wife should find themselves in a fortunate situation. Be pleased, sir, also to assure Madam Mignard of all my interest and of my very sincere and very tender attachment.

130 Adieu, sir. I have not the honor to be acquainted with Madam Surraget, but nevertheless I desire that you will have the goodness to charge yourself with the favor of inducing her to accept of my respects.

If I could be agreeable to you in anything, I should earnestly seize the opportunities you might offer me. I shall be happy to prove to you the distinguished and affectionate sentiments with which you have inspired me and with which I have the honor to be your very humble and obedient servant,

(Signed) LE COMTE DE MARCHAIS.

133 EXHIBIT XLII

Charlevoix's map of the Sault.

(The original is in Charlevoix's Travels, vol. 5, ed. 1744, Paris. A copy is sent forward for the purposes of the appeal under rule 8 (3.)

EXHIBIT XLIII.

Original brevet of ratification.

A copy is embodied in the petition, near the beginning. The original has been sent forward to Washington for the purposes of the appeal under rule 8 (3.)

EXHIBITS XLIV AND XLV.

Notice for M. Cazere.—Extracts from official list of grants of seignories in Canada and authenticated copy of brevet of ratification, 1751.

[Translation.]

Memorandum for Mr. Cazere, remitted by the bureau of the archives.

The concessions use to be delivered, it is true, by the governor and intendant, but they ought to be registered at the registry office of the superior council at Quebec. No register of that office has reached the archives. Consequently it is not possible to deliver the copy asked of the concession of the 18th October.

It has not been the same as to the ratification, as it took place in France, and copies thereof could be deposited in the archives.

It is then necessary to be contented with the copy (which is authentic) of this ratification, which has more force evidently than the concession itself.

As to the latter, there can only be delivered an extract of a preserved list of the concessions en seigneuries granted from the 23d November, 1736, to the 3d September, 1751, upon which appears the analysis of the said concession.

Minute searches have been made in the correspondence of Messrs. de la Janquiere and Bigot, governor and intendant of Canada, who delivered this concession, but it refers generally to the general objects of their administration, and nothing at the epoch of 1750 and the following years speaks of of the concessee except to announce (letter dated 24 August, 1750) that Mr. De Repentigny is clearing up lands at Sault Ste Marie, of which he is to ask him ultimately for a concession.

137 *Extract from official list of seignories.*

Translation.

Ministry of the marine and of the colonies, general secretaryship, office of the archives.

Extract of the list of the concessions en seigneuries granted in the colony of Canada from the 23d September, 1736, until the 3d September, 1751, with mention of the work which has been done therein, and of the inhabitants who are settled there, or who have taken lands therein; the said list deposited at the archives, (annexed to the fo. 11 of the register of Canada; dispatches and orders of the king and concessions 1670 to 1760.)

" 18th OCTOBER, 1750.

"To M. de Bonne and Ch'er de Repentigny: The Sault Ste. Marie, with 6 leagues in front by 6 in depth, bordering the river which separates the two lakes."

In the margin is the following notice :

"They are clearing up lands and are bringing (sont venir) cattle from Illinois in order to establish a farm at said place."

139 *Authenticated copy, brevet of ratification.*

Translation.

Ministry of the marine and of the colonies, general secretaryship, deposit of the archives.

Extract of a copy of the registers of the king, from 1670 to 1760, for Can-

ada, deposited at the archives.—(See copy of same in petition, near beginning.)

141 Exhibit XLVI, original deed from Battersby to Rotton. (See post stipulations 19th and 21st Nov., 1863, Exhibit 13.)

143 EXHIBIT XLVII.

Herald's grant of arms, with cross pattee, to Wm. Gardeur.

Extract of the general armorial (manuscript) ordered by edict of the king, dated November, 1696. Armorial of the generalty of Caen, page 150, article 132.

"Guillaume le Gardeur, esquire, counsellor of the king and lieutenant general criminal and bailwick and seat presidial of Caen, and Jeanne Ursule de Barnieres, his wife:

"Portent de Gueules a un lion d'argent lampasse et arme d'or, tent des deux pattes de devant une croix pattee* haussee et posee en al de meme. Accole de Gueules a um itaile d'or; coupe d'argent a un leopard rampant et naissant de sable; tampassie et arme de Gueules."

We, Antonie Marie d'Hosier de Serigny Chevalier, judge of arms of the nobility of France, chevalier grand-croix honorary of the royal order of the St's Maurice and lazare of Sardigna, certify that the above extract is conform to the said armorial of the generalty of Caen, and that the above coat of arms were registered at the above-mentioned general armorial in 1697.

In witness whereof, we have signed the present certificate and have caused it to be countersigned by our secretary, who has affixed to it the seal of our arms, at Paris, Monday, the fifteenth day of January, in the year one thousand seven hundred and eighty-seven.

(Signed) D'HOZIER DE SERIGNY.

By me, the judge of arms of the nobility of France.

(Signed) DUPLESSIS.

147 EXHIBIT XLIV.

Copy letter, in the nature of a caveat, from John Sheriff to Commissioner of Gen'l Land Office, 1826, and certified under seal of Gen'l Land Office.

Geo. Graham, esq., Commissioner:

DEAR SIR: My friend Mr. Sheriff, of New York, will hand you this. He has business of importance in your office, which he will explain.

Sir, your ob't serv't,

M. ST. CLAIR CLARKE.

7th Dec., 1826.

149 George Graham, esq'r, Commissioner of the General Land Office, Washington:

SIR: The undersigned has been directed, as a matter of prudence and fairness, to file with the Commissioner, on part of his constituent, the following statements; and further, most respectfully to enter this his caveat against

* According to the blason of this coat of arms, drawn with pen on the margin of a copy of the decree of registry of the titles of nobility of Messrs. Le Gardeur, rendered at the sovereign council of Quebec, the 23d July, 1667, it appears that this cross must not be *pattee* but *recroisettee*.

(Signed) D'B DE GENY.

the issuing of patents, or other office rights emanating from the General Land Office, for any portion of the lands embraced by the title of his constituent, conceiving his constituent in conjunction with the others deriving title from the same source, as the only persons having just claims thereto:

Description of lands.

Michigan Territory, the falls of St. Mary, with six leagues in front on the portage, with six leagues in depth, bordering on the river which seperates the two lakes.

Abstract of original title.

1750, 18th Oct'r. Original grant by the Marquis De la Jonquiere, governor and lieut. general in New France, and by Francois Bigot, intendant of the same, to Capt'n Debonne, of the regiment of Conde, and to Chevalier De Repentigny, ensign, duly registered at Quebec.

1751, 24 June. Warrant of ratification, signed by Louis 15th, at Versailles, recorded in Quebec, 11 August, 1766.

150 *Abstract of title from original holders.*

1796, 12 July. Deed from P. A. Debonne, judge of his majesty's court of the king's bench, to James Caldwell, of Albany, in the State of New York, for the undivided one half of said lands, in consideration of £1,570 2 3 sterling, duly executed.

1798, 18 July. Deed from James Caldwell to Arthur Noble, of the State of New York, for the same lands; consideration, $50,000 dollars.

1814, 22d July. Will of Arthur Noble devised to his nephew, John Slacke, all his lands in the United States.

1818, 3d March. John Slacke, by his codicil, devised all his lands in the United States to Agnes, his wife, in trust, &c.

1826, 8th May. Agnes Slacke constituted Arthur Slacke her attorney, with full powers to appoint others, one of whom the undersigned is, under date of 14th Oct'r, 1826.

The undersigned is in possession of all the documents referred to as above, which he hereby exhibits to the Commissioner, but begs leave to withhold them from the files of the office.

Addressed at New York City I shall receive, at all times, your communications.

Most respectfully, sir, your obed't serv't,

(Signed) JOHN SHERIFF,
Attorney for Agnes Slacke.

Washington, 7th Dec., 1826.

(Here follows diagram, marked page 145.)

153 *Stipulation as to evidence of certain matters of pedigree, filed July 31st, 1862.*

From documents and evidences submitted to his inspection, the district attorney of the United States for the district of Michigan is satisfied and therfore admits to be true—

1st. That the Chevalier De Repentigny, mentioned in the concession and in the brevet of ratification set forth in the petition in this case, whose name was Louis le Gardeur de Repentigny, was lawfully married to Marie Chaussegros de Levy at Quebec, April 20th, 1750, and that he died in Paris, France, October 9th, 1786.

154 2d. That the only child of this marriage was a son, named Louis Gaspard le Gardeur de Repentigny, born at Quebec, July 10th, 1753.

3d. That the said Gaspard was lawfully married to Magdeliene Pauline Marguerite le Provost Duquesnel, at Capesterre, on the island of Guadaloupe, on the 9th day of December, A. D. 1780, and died at Guadaloupe July 2d, 1808.

4th. That the only children of this marriage were the following, viz: Louis, born at Guadaloupe, who was never married, and died without children, at Guadaloupe, May 4, 1820. Theodore, born at Guadaloupe August 13, 1786, who was never married and died without children July 1st, 1811, at Guadaloupe; and Antoine Camille, who was born at Tours, in France, July 15th, 1789.

5th. That said Camille was lawfully married to Marie Antoniette Nicoli Aimee Gautheaume at said Guadaloupe, April 19th, 1814, and died at said Guadaloupe April 1st, 1820, leaving said Marie Antoinette his widow, (who died at Guadaloupe May 29th, 1850) and four children, the fruit of his said marriage, viz:

6th. Theodore Rene, born at Guadaloupe, April 30th, 1818, and who died at Guadaloupe, December 27th, 1821.

155 7th. Lizette Antoinette, one of the petitioners, born July 3d, 1816, at Guadaloupe, afterwards married to Monsieur Bonfils, but now a widow; and

8th. Josephine Lucrece, born at Guadaloupe, November 15th, 1819, lawfully married to Cyprien Clavie at Guadaloupe, but now a widow, her said husband having died at Guadaloupe some years ago; and

9th. Louise Pauline, born at Guadaloupe, February 17th, 1815, who remains unmarried, which said three last named ladies, to wit, the said Louise Pauline, Josephine Lucrece, and Lizette Antoinette, appear to be legal lineal descendants of the said Chevalier de Repentigny, one of the concessees and confirmees mentioned in said petition.

10th. And the said district attorney further admits that from his inspection of other documents and proofs submitted to him, Captain Louis de Bonne, the other concessee and confirmee mentioned in said petition, was lawfully married at Montreal, Canada, to Louise Prudhomme, July 14th, 1751, and died some time before the 25th of July, 1763, leaving said Louise his widow, and one child by her, viz: Pierre Amable de Bonne, the sole fruit of the marriage, born in the province of Quebec, November 25th, 1758, who, in the year 1796, was a judge of the court of king's bench at Montreal.

11th. That Agnes Slacke, late of the Isle of Jersey, was the widow of John Slacke, deceased, and that said Agnes Slacke on the Isle of Jersey in February, 1861.

156 12th. That John Gray Slacke was a child of said John Slacke and said Agnes, his wife, and that the wife of said John Gray Slacke was Louisa Maria, who died at Douglas, in the Isle of Man, July 22d, 1848.

13th. That Anna Maria Slacke was a sister of said John Gray Slacke, by the same parents, and was married to John Rotton, in the parish of St. Peter, in the county of Dublin, Ireland, October 15th, 1821.

14th. That John Rotton, junior, a son of of this last marriage, was born at the parish of Wolcot, in the county of Somerset, England, on or before the 28th day of May, 1823, and died at Malta the 7th of November, 1855.

15th. That Guy Rotton, one of the petitioners, was also a son of the same marriage and a brother of said John Rotton, junior, deceased, and was born in said parish of St. Peter, August 22d, 1824, and was the second son of said marriage.

And the said district attorney further stipulates that for the purpose of proving pedigree in this case, the said petitioners may use upon the hearing, copies of any documents or paper they may see fit to introduce, taken

from any department of the executive government of France, or its colonies, or of Canada, or from any church, or parish register, provided such copies are certified and authenticated under the seal of the proper department or of the government. It is, however, stipulated that this document shall be considered and treated only as prima facie evidence of the facts therein admitted.

ALFRED RUSSELL, *U. S. Dist. Att'y, Michigan.*
J. M. HOWARD, *Sol. for Petitioners.*

Detroit, July 30th, 1862.

157 *Stipulation admitting certain (Slacke) deeds as proved, signed 13th Sept'r,* 1862.

From an inspection thereof the district attorney of the United States admits the genuineness of the following described deeds and the signatures and seals thereto, now in the hands of the solicitor for the petitioners, viz:

1. A deed of appointment from Agnes Slacke to John Gray Slacke, bearing date the 5th day of December, A. D. 1839, attested by Samuel Winnicott and E. C. Herman, written on parchment.

2. A deed or indenture from Henry Battersby to Lieut. Col. Guy Rotton, bearing date the 17th day of May, A. D. 1861, attested by John Rotton and William Rotton, also written on parchment, and dispenses with further proof of the execution of said deeds.

September 13, 1862.

(Signed) ALFRED RUSSELL, *Sol'r for Respd'nt's.*
(Signed) J. M. HOWARD, *Sol'r for Pet'rs.*

159 *Exhibit No.* 1, *above referred to.—Deed of appointment from Agnes Slacke to John Gray Slacke, 5th Dec'r,* 1839.

This indenture, made the fifth day of December, in the year of our Lord one thousand eight hundred and thirty-nine, between Agnes Slacke, widow, devisee, and executrix of John Slacke, late of Dominick street, in the city of Dublin, esquire, deceased, of the one part, and John Gray Slacke, of Castle Blaney, in the county of Monaghan, in Ireland, esquire, their only son and heir at law of the other part. Whereas, by a certain indenture of bargain and sale made on or about the eighteenth day of July, one thousand seven hundred and ninety-eight, between James Caldwell, of the city of Watervent, in the county of Albany, and State of New York, merchant, of the one part, and Arthur Noble, of Noblesborough, esquire, of the other part, he, the said James Caldwell, for and in consideration of the sum of fifty thousand dollars to him paid by the said Arthur Noble, did grant, bargain, quitclaim, alien, and release unto the said Arthur Noble, his heirs, executors, administrators, and assigns, all that undivided half of the fief or seignory called Saint Marie, or Sault Saint Marie, the whole containing six French leagues in front by six leagues like measure in depth, joining the river which separates the two lakes, together with the rights of fishing and hunting and all other rights, privileges, and advantages appertaining and belonging thereto, without any restriction or reservation whatsoever, saving and excepting all other privileges and reservations whatsoever, specified in the original grant or concession of the said fief, and all the estate, right, title, and interest of the said James Caldwell, his heirs, executors, or administrators of, in, or to, the same, to hold the said undivided half part of said fief unto the said Arthur Noble, his heirs and assigns, unto the only use of the said Arthur Noble, his heirs and assigns forever. And whereas the said Arthur Noble, being by virtue of the said in part recited indenture, seized or possessed of the said undivided half of the said fief, made and pub-

lished his last will and testament in writing, duly attested by three credible witnesses, bearing date on or about the twenty-second day of July, one thousand eight hundred and fourteen, and thereby devised and bequeathed the said undivided moiety of said fief under the description of all his lands in the United States of America unto his nephew, the said John Slacke. And whereas the said Arthur Noble departed this life on or about the 27th day of May, 1816, without altering or revoking his said will, which was afterwards proved in due form of law in the prerogative courts at Dublin. And whereas the said John Slacke, being seized or possessed of the said moiety of said fief, duly made and published his last will and testament in writing, attested by three credible witnesses, bearing date the 8th day of January, 1808, and a codicil thereto bearing date the 3d day of June, 1818, and after reciting that he had been left the said property in America by his uncle, the said Arthur Noble, he thereby left and bequeathed all his estates in Ireland, England, and America, to his said wife, Agnes Slacke, her heirs and
161 assigns forever, upon trust to dispose of and divide the same amongst his children as she should think fit; and the said testator thereby empowered her to exclude any child or children she might choose, or to give the whole or any part thereof she chose to one or more of his children as she should by deed or will appoint, it being his intention that she might divide amongst or charge the same for his said children as she chose, without any control either as to the amount or nature of the estate to be given to them or any of them; and of his said will and codicil the said testator appointed his said wife, Agnes Slacke, sole executrix who duly proved the same in the prerogative court at Dublin. And whereas the said John Slacke soon after departed this life without altering or revoking his said will leaving three sons, viz: Arthur Slacke, Charles Slacke, and the said John Gray Slacke, and several daughters him surviving. And whereas the said Arthur Slacke and Charles Slacke are long since dead without issue, and the said Agnes Slacke has disposed of and divided all the property left her by her said husband to and amongst his children save the said moiety of said fief of Sault Saint Marie *xix*, which she is now minded and desirous to appoint and make over to the said John Gray Slacke, the only surviving son of her husband, the said John Slacke: Now, therefore, this indenture witnesseth that she, the said Agnes Slacke, in consideration of the natural love and affection which she beareth to her son, the said John Gray Slacke, and in pursuance and execution of the power or authority to her for that purpose
162 given or reserved by the hereinbefore in part recited will and codicil of the said John Slacke deceased, and all other powers authorities her thereto enabling, hath directed, granted, limited, and appointed, and by these presents doth absolutely direct, grant, limit, and appoint, that all and singular the said moiety of the said fief hereinbefore and after described and released, or intended so to be, with all its rights, members, and appurtenances whatsoever, shall be and remain unto and to the use and behoof of the said John Gray Slacke, his heirs, executors, administrators, and assigns forever.

And this indenture further witnesseth that, for the considerations aforesaid, as well as in further consideration of the sum of ten shillings of lawful money of the United Kingdom of Great Britian and Ireland, to the said Agnes Slacke in hand paid by the said John Gray Slacke, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, and for the more perfectly and satisfactorily conveying and assuring the said moiety of said fief, with the appurtenances, unto the said John Gray Slacke, his heirs, executors, administrators, and assigns, she, the said Agnes Slacke, doth by these presents grant, bargain, sell, alien, release, and confirm unto the said John Gray Slacke, his heirs, executors, adminis-

trators, and assigns, all that the said full and undivided moiety or half part (the whole into two equal parts being considered as divided) of and in all and singular the hereinbefore described fief or seignory, called Saint
163 Marie or Sault Saint Marie, together with all houses, buildings, ways, paths, waters, water-courses, land covered with water, timber and other trees, woods and underwoods, mines and quarries, and all manner of rights, privileges, and advantages whatsoever to the said half part of said fief or any part thereof belonging or appertaining, all which said lands, tenements, and hereditaments are now in the actual possession of or legally vested in the said John Gray Slacke, by virtue of a bargain and sale to him thereof made by the said Agnes Slacke, for five shillings consideration, by indenture bearing date the day next before the date of these presents, for the term of one whole year from thence next ensuing, and the reversion and reversions, remainder and remainders, rents, issues, profits, duties, and services of or belonging to the said lands, tenements, and premises, or any part thereof, and all and every estate, right, title, and interest, trust, property, claim, and demand whatsoever of the said Agnes Slacke, of, in, or to the same, and every part thereof. To have and to hold the said undivided moiety or half part of said fief or seignory, hereinbefore described and released or intended so to be, with all and singular their rights, privileges, appendages, and appurtenances, unto and to and for the sole use, benefit, and behoof of the said John Gray Slacke, his heirs, executors, administrators, and assigns forever. And the said Agnes Slacke doth hereby for her-
164 self, her heirs, executors, and administrators, covenant and agree with and to the said John Gray Slacke, his heirs, executors, administrators, and assigns, that she, the said Agnes Slacke, and her executors and administrators shall and will from time to time, and at all times hereafter, upon every reasonable request, but at the proper cost, charges, and expenses of the said John Gray Slacke, his heirs, exectors, administrators, and assigns, make, do acknowledge, suffer, execute, and perfect all and every such further and other lawful and reasonable acts, deeds, conveyances, assurances, matters, and things whatsoever for the better, more perfectly, absolutely, or satisfactorily granting, limiting, appointing, releasing, and assuring the said moiety or half part of the same hereditaments and premises, and every or any part thereof, unto and to and for the use, benefit, and behoof of the said John Gray Slacke, his heirs and assigns, as he, the said John Gray Slacke, his heirs, executors, *executors*, administrators, or assigns, or his or their counsel in the law shall advise or require.

In witness whereof, the parties aforesaid have hereunto set their hands and affixed their seals the day and year first above written.

AGNES SLACKE. [L. S.]

Signed, sealed, and delivered by the within-named Agnes Slacke, in presence of—

SAMUEL WINNECOTT,
E. C. HERMAN,
Both Clerks to William Foot, of Stoke Damerel, in Devon, Notary Public.

167 *Exhibit No.* 2, *above referred to.—Conveyance from Henry Battersby to Guy Rotton*, 17 *May*, 1861.

This indenture, made the 17th day of May, one thousand eight hundred and sixty-one, between Henry Battersby, of Larkfield, in the county of Westmeath, esquire, of the one part, and Guy Rotton, of Clifton, in England, lieutenant colonel in her Britanic Majesty's royal artillery, of the other part. Whereas Arthur Noble, formerly of Churchhill, in the county of Monaghan,

in Ireland, being in his lifetime, seized in fee simple, and absolute owner of one undivided moiety of the fief or seignory of Sault Saint Marie, and the territory and lands therein comprised, situate in the State of Michigan, in the United States of America, duly made and published his last will and testament in writing, duly attested to pass freehold estates, bearing date the twenty-second day of July, one thousand eight hundred and fourteen, and thereby, amongst other bequests, devised the said fief and lands to John Slacke, of Dominick street, in the city of Dublin, esquire, and the said Arthur Noble afterwards died, and probate of his said will was on the twelfth day of May, one thousand eight hundred and seventeen, granted by the court of prerogative, in Ireland, to Maxwell Blacker, of North Great George's street, in the city of Dublin, esquire, one of the executors therein named. And whereas, the said John Slacke duly made and published his last will and testament, in writing, bearing date the eighth of January, one thou-
168 sand eight hundred and eight, and a codicil thereto dated the third day of June, one thousand eight hundred and eighteen, both duly attested to pass freehold estates, and by said codicil, amongst other things, devised the said fief and lands to his wife, Agnes Slacke, upon certain trusts therein mentioned, and the said John Slacke afterwards died, and his said will and codicil were duly proved in the said court of prerogative, in Ireland. And whereas the said Agnes Slacke afterwards by deed of conveyance conveyed said fief and lands to John Grey Slacke, late of Castleblaney, in the county of Monaghan, in Ireland, esquire, and the said John Grey Slacke duly made and published his last will and testament in writing, duly attested to pass freehold estates, bearing date the twenty-ninth day of March, one thousand eight hundred and forty-one, and thereby after reciting that he was then entitled to and was prosecuting before the Congress of the United States of America a claim to the said undivided half part or share of the said fief or seignory, and that same had been referred to a committee of Congress, which had not then yet made its report thereon, the said testator devised and bequeathed unto the said, Henry Battersby, (party hereto,) his heirs, ex'ors, and adm'ors, the said one undivided half part or share of the said fief, and all his estate, right, and title therein, together with other property, to hold unto the said Henry Battersby, his heirs, ex'ors, and adm'ors forever, upon trust when and if the said fief should be recovered, or got into his or their possession, if said testator's wife, Louisa Maria Slacke,
169 should be then living, to sell the same, and to invest the produce thereof, as therein mentioned, and after deduction of costs and expenses therein mentioned, to pay the interest thereof to his said wife for life, if she should be then living, and after her decease, (whether the said fief should be then in the actual possession of his said trustee, his ex'ors, or adm'ors or not,) to assign or assure the said fief, (or if sold, the produce thereof,) unto the son of the said testator's sister, Mrs. Rotton, who should be second in order of birth at the time of the decease of his said wife upon payment to the said Henry Battersby of all such costs, charges, and expenses in recovering thereof.

And whereas the said John Grey Slacke died on or about the day of , one thousand eight hundred and forty-seven, leaving his said wife, Louisa Maria Slacke, but no lawful issue, him surviving, and his said will was duly proved in the court of prerogative, in Ireland, and probate thereof granted to the said Louisa Maria Slacke, his widow, on the twenty-first December, one thousand eight hundred and forty-seven. And whereas John Rotton, the father of the said Guy Rotton, party hereto, was, on the fifteenth of October, one thousand eight hundred and twenty-one, married to Anna Maria Slacke, the sister of the said John Grey Slacke, being the same Mrs. Rotton in said will mentioned, and the eldest son of said mar-

riage was John Rotton, the younger, who was born on the twenty-seventh day of March, one thousand eight hundred and twenty-three, and the second son of said marriage was the said Guy Rotton, (party hereto,) who was born on the twenty-second day of August, one thousand eight hundred and
170 twenty-four. And whereas the said Louisa Maria Slacke, the widow of the said John Grey Slacke, died on or about the twenty-second of July, one thousand eight hundred and forty-eight, and at the time of her decease the said Guy Rotton, (party hereto,) was then the second son in order of birth of testator's said sister, Mrs. Rotton, the said John Rotton, the younger, being then her eldest son, and alive. And whereas the said moiety of said fief was not recovered during the lifetime of said Louisa Maria Slacke. And whereas, on the death of the said Louisa Maria Slacke, the other objects of the trusts reposed in said Henry Battersby having ceased, he has been required by the said Guy Rotton to convey the said moiety of the said fief to the said Guy Rotton:

Now this indenture witnesseth that, in pursuance of the trusts of the will of the said John Grey Slacke, deceased, and in consideration of the sum of ten shillings, by the said Guy Rotton to the said Henry Battersby in hand paid at or immediately before the execution hereof, the receipt whereof he, the said Henry Battersby, doth hereby acknowledge, he, the said Henry Battersby (by the direction and at the special instance and request of the said Guy Rotton, testified, by his being a party to and executing these presents,) hath granted, bargained, sold, aliened, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, release, convey, and confirm, (by way of conveyance as such trustee as aforesaid, but not by way of warranty of title,) unto the said Guy Rotton, and
171 to his heirs and assigns, all that and those one undivided moiety of the fief or seignory of Sault Saint Marie, and the territory and lands therein comprised, situate in the State of Michigan, in the United States of America, together with all and singular the rights, members, privileges, advantages, and appurtenances thereuto belonging or in anywise appertaining, in as full and ample a manner as the said John Grey Slacke was seized or possessed thereof, to have and to hold the said fief or seignory unto the said Guy Rotton, his heirs and assigns forever. And the said Henry Battersby doth hereby for himself, his heirs and assigns, covenant, promise, and agree to and with the said Guy Rotton, that he, the said Henry Battersby, and his heirs, shall and will, from time to time, and at all times hereafter, at the reasonable request, cost, and charges of the said Guy Rotton, his heirs or assigns, make, do, and execute, or cause, or procure to be made, done, or executed, all and every such acts, deeds, matters, and things in the law, whatsoever, for the more perfectly and effectually conveying, assigning, and assuring unto the said Guy Rotton, the premises hereby conveyed or intended so to be, as by the said Guy Rotton, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably advised, devised, or required. And the said Guy Rotton doth hereby for himself, his heirs, ex'ors, and adm'ors, for and in consideration of the conveyance hereinbefore contained, fully and freely release, exonerate, quitclaim, and forever discharge the said Henry Battersby, his heirs, ex'ors, and adm'ors of and from
172 the trusts of the said in part recited will of the said John Grey Slacke, deceased, and of and from all actions or suits on foot of said trusts. And the said Guy Rotton doth hereby for himself, his ex'ors and adm'ors, covenant, promise, and agree to and with the said Henry Battersby, that he, the said Guy Rotton, his heirs, ex'ors, and adm'ors shall and will indemnify and save harmless the said Henry Battersby, his heirs, ex'ors, and adm'ors of and from all actions, suits, and demands arising out of said trusts, or in any manner relating thereto, and that he, the said Guy Rotton,

his heirs, exo'rs, and adm'ors shall and will, at his and their own proper costs and charges, from time to time, and at any time hereafter, make, do, and execute, or cause and procure to be made, done, or executed, all and every such further and other acts, deeds, and assurances, whatsoever, for the more perfectly releasing and exonerating the said Henry Battersby, his heirs, ex'ors, and adm'ors from the trusts of the will of the said John Grey Slacke, deceased, and for indemnifying him and them against all actions, suits, or demands arising out of said trusts, or in any manner relating thereto, as by the said Henry Battersby, his heirs, ex'ors, or adm'ors, or his or their counsel learned in the law, shall be lawfully or reasonably advised, devised, or required; provided, nevertheless, that nothing herein contained shall in any manner prejudice or affect the said Henry Battersby, his heirs, ex'ors, or adm'ors, or his or their estates, real or personal, in any
173 manner whatsoever; the said Henry Battersby having merely executed these presents at the request of the said Guy Rotton.

In witness whereof the parties aforesaid have hereunto subscribed their names, and affixed their seals the day and year first in these presents written.

HENRY BATTERSBY. [L. S.]
J. ROTTON, [L. S.]
L. Col. R'l Artillery.

Signed, sealed, and delivered by the said Henry Battersby, in presence of us—the word said being interlined on the twenty-second line and on the thirty-second line of the first page hereof, and the words "or cause and procure to be made, done, and executed," interlined on the second line of the third page hereof—

ROB. SMYTH.
ROBERT PURCELL,
The Na'l Bank, Ireland.

I, Robert Smyth, one of her Britannic Majesty's justices of the peace, of the county Westmeath, in Ireland, do certify that the name "Henry Battersby," subscribed to the foregoing deed, is the handwriting of the said Henry Battersby who is named to said deed, and that I saw the said Henry Batterby sign, seal, and deliver said deed, and that the name Rob.
174 Smyth, subscribed as a witness to said deed, is my proper name and handwriting.

Dated this 17th day of May, one thousand eight hundred and sixty-one.

ROB. SMYTH,
A Justice of the Peace for the County of Westmeath, in Ireland.

Signed, sealed, and delivered by the said Guy Rotton, in presence of—

JNO. ROTTON.
WILLIAM ROTTON, *Barrister at Law*, 38 *York Crescent, Clifton, Bristol.*

SAULT STE MARIE DEPOSITIONS.—(Filed 22nd Oct., 1862.)

To Louis Gornon and Iquoinoise, his wife:

1. What is your name, your age, and your occupation? and how long have you resided at the Sault Ste Maries?

2d. Who was the father of Madame Gornon? and when and where did he die? What was his father's name, and when and where did he die?

3d. If you have answered that the father of Madame Gornon was Jean Batiste Cadotte, and that the father of said Jean Batiste was Jean Batiste Cadotte, (the first or elder, that is, the grandfather of Madame Gor-
176 non,) please state the names of the legitimate children of your said

grandfather, and when they died, and, so far as you know, at what places they died.

4th. Who was the first wife of your said grandfather? And if she was an Indian woman, please state what was her tribe, what was her Indian name, and what was her name in French or English. How old was she when she died, and at what place did she die?

5th. Who was the mother of Madame Gornon? where did said Jean Batiste (second) and her said mother reside, and when and where did she die? Did she ever own or claim to own and occupy a piece of land at the Saulte Ste Marie? If so, where was it, and from whom did she claim to own or hold it?

6th. Did you ever see your said grandfather, Jean Batiste Cadotte (the first or elder?) If so, when and where did you see him?

7th. Did you ever converse with your said father, Jean Batiste Cadotte, (2nd) about his father, (Jean Batiste Cadotte, 1st,) and about his coming to the Sault Ste Marie with the Sieur or Chevalier de Repentigny? If you did hear your father speak of the Chevalier de Repentigny, relate what he said about his father (Jean Batiste, 1st) coming to the Sault with said
177 Repentigny. Who did the old man say de Repentigny was? and who sent him to the Sault? What did you hear from your father about De Repentigny's building a fort at the Sault? What did you hear from your father about said De Repentigny building houses at or in the fort? What did you hear your father say about those houses being burnt, and to whom the said houses belonged? Relate particularly all your father told you he knew about these matters, and all he said his father told him about them; how many houses were burnt; when they were burnt; who was in possession of the fort and the houses at the time they were burnt; and whether said old Cadotte remained in possession of the place after they were burnt.

8th. What business did the old Cadotte carry on at that place? Where did he come from, and what business did he follow before he came to the Sault Ste Marie to reside?

9th. Describe the old French fort at the Sault Ste Marie, and the old portage road as they were when you first saw them, and give the time when you first saw them, as well as you can remember.

To Francois X. Biron, another of said witnesses:

178 1st. State your age and the place of your birth, and the kind of business you have generally followed during your life. State also how much education you have had, and whether you have been engaged in mercantile pursuits.

2d. Who was your father-in-law, and how was he related to old Jean Batiste Cadotte (the elder) formerly of the Sault Ste Marie?

3d. If you have answered that your father-in law was Michel Cadotte, formerly of the Sault Ste Marie, and that he was the son of a brother of the old Jean Batiste Cadotte, of the same place, state whether you knew said old Cadotte. Who were the sons of said old Cadotte, and when did you get acquainted with them, and how long did you know them? and did you ever converse with them respecting their father?

4th. State what his sons or either of them told you respecting the following matters: At what time their father came to the Sault Ste Marie; with whom did he come; from what place, and on what business; who had the possession of the post there when he arrived—the French or the English? whether the celebrated traveller, Henry, was ever there; and where was Henry at the time of the massacre of the garrison at Machillimac-
179 inac by the Indians? Who was the wife of old Cadotte, and who were her children?

5th. State whether your father-in-law told you that he had been in the

employ of his uncle, the old Jean Batiste Cadotte, at the Sault Ste Marie' and how long and in what kind of business; whether your father-in-law or any one of the sons of said old Cadotte told you what they had learned from said old Cadotte about his coming to the Sault; what old Cadotte said about his being at the Sault with the Sieur de Repentigny; what he said about an old seigniory at the Sault, and by whom it was or had been owned; what he said about the seigniory having been sold, and to whom it had been sold; whether or not old Cadotte stated that he, Cadotte, had been sent to the Sault to take possession of the post; whether he, said old Cadotte, had ever acted as commandant of the post; whether old Cadotte was ever a partner with the old traveller, Alexander Henry, in the fur trade. State fully all you heard, either from your father-in-law or from the sons of old Cadotte, on all these subjects; and state particularly what you heard them say about Mr. De Bonne, or Captain De Bonne, as connected with the seigniory or the sale thereof.

6th. Did you ever see the old fort erected by the French at the Sault Ste Marie. If so, state at how early a day you saw it, or the remains of it What were the remains you found of it? describe them particularly; and describe the spot with reference to objects which are now on the ground at the Sault; whether it was west of the present stockade inclosure of Fort Brady; describe the spot with reference to a small ravine or hollow forming a sort of channel which falls into the Ste Mary's River, just west of the western side of said stockade; and state whether the said old fort was not upon the sandy bluff just west of said ravine, and between the ravine and what is known or has been known as the Sayre lot, or the lot once claimed by the heirs of John Sayre. What do you know about an old portage running from the river at or near the old fort up to a point just above the rapids? If you have any knowledge respecting said portage, please state when you first saw the portage road.

181 The above direct interrogatories are settled by consent, all notices and other formalities being waived and the testimony to be admitted, subject only to objection on the ground of competency and relevancy.

J. M. HOWARD, *Sol. for Pet'rs.*
ALFRED RUSSELL, *U. S. Dist. Att'y.*

Sep. 17, '62.

182 *Cross-interrogatories on the part of the respondents to Louis Gornon and Iquoinoise, his wife.*

As to third direct interrogatory: Did you know Michel Cadotte, your own uncle, the brother of Jean Batiste Cadotte, the younger, your father? Were there any other, and what, members of the Cadotte family who were named Michel or Michael, and especially state whether there was any such person as Michel Cadotte, your own granduncle, and the brother of Jean Batiste, the elder, your grandfather? If so, what was the date of his death? What quantity of real estate did he own near Panwayteeg, otherwise Sault Ste Marie South? where was it situate, and what was the nature of his interest therein? Whether for a term of years, subject to rent, or otherwise less than an absolute ownershiy forever, and free from rent?

183 As to fifth direct interrogatory: What was the christian name of the mother of Madame Gornon? What was the quantity of land owned or claimed by the mother of Madame Gornon, and where was it situate? Was her claim inquired into, allowed, and confirmed by the United States government commissioners, and what was the nature of her interest therein? Whether for a term of years, subject to rent, or otherwise less than an absolute ownership forever, and free from rent?

As to seventh direct interrogatory. At or about what date was said Jean Batiste Cadotte, the elder, said to have come to the Sault? At what date was he said to have been first connected with the Chevalier de Repentigny? On what occasion, at what date, and in whose presence had you this conversation with your father? and what led to it? Have you, or not, from such conversation, or other family conversations long since had, any reason for believing that the representatives of De Repentigny and De Bonne were the rightful owners or seigneurs of all the land formerly owned by the Cadotte family at Panwayteeg? If not, state why not; if so, state why so; and state particularly whether or not the said De Repentigny or De Bonne cleared wild land, brought it into cultivation, and made a "metairie"
184 there, and how much land they or either of them so improved, and up to what date they or either of them, or the representatives of either of them, resided there, and continued to improve the same? Was or was not the fort considered to belong to the government.

As to eighth and previous direct interrogatories: 1stly. What was the quantity of land owned by Jean Batiste Cadotte, the elder, your grandfather? and where was it situate?

2ndly. Have you, or not, heard that he owned a lot at Panwayteeg, bounded in front by the river St. Mary, on the east side by a lot formerly belonging to Jean B. Dubois, and on the west side by a lot formerly belonging to Charles O. Ermatinger, the same being fifteen rods wide, and eight acres deep, which lot so bounded afterwards belonged to Messieurs Lyman and Truman Warren, whose claim was enquired into and confirmed by the said United States comm'rs?

3rdly. Was or was not said lot his own absolute property, forever free from rent? If not, specify the interest which he had therein.

4thly. Do you know or have you heard whether or not the said Jean Batiste Cardotte, the elder, held his real estate as an inferior proprietor, or the tenant of any, and what, seigneur or superior proprietor or land-
185 lord, a titre de redevances, subject to payment of rent for a term of years, or in any other way less beneficial than as his own absolute property forever free of rent? If so, state how much land he held so, where was it situate, and what was the nature of his interest, and subject to what rent, and to whom was said rent payable?

5thly. Is it customary in the neighborhood of Panwayteeg to hold real estate a titre de redevances, subject to payment of rent for a term of years, or in any other way less beneficial than in perpetuity, and free from rent? State particularly any instances which you have known in that neighborhood of real estate being so held for inferior interests.

6thly. Had the said Jean Batiste Cadotte, the elder, any other land besides said lot? If so, where was it situate, how far from said lot, and on which side of it? And what was the nature of his interest therein? Relate particularly.

7thly. Did or did not the said Jean Batiste Cadotte, the elder, at some time before his death deed said above-described lot to his sons Jean Batiste Cadotte, the younger, your father, and Michel Cadotte, your uncle, and their hirs? Which of these two brothers survived the other? and did or did not said lot pass to the daughter of said Michel, and to her husband, Leon St. Germain? If not, how otherwise did it pass, and to whom? And did said Leon St. Germain survive his said wife, the daughter of said Michel Cadotte.
186 Look upon the printed book purporting to be the fourth volume of the Report of the Commissioners of Land Claims, especially on that part which at page 835 purports to be a printed copy of a certain French deed, dated 24th May, A. D. 1796, from the said Jean Batiste Cadotte, the elder, to his sons, the said Jean Batiste Cadotte, the younger, and Michel Cadotte, and to

their heirs, and say whether or not the purport of the said deed is according to what you have known from other sources with regard to the said property.

As to ninth direct interrogatory: Do you remember the portages at the Sault Ste Marie before the canal was made? Whether was the portage on the north side or the portage on the south side the shortest, best, and most used before the said canal was made?

As to tenth direct interrogatory: Do you know of anything which can benefit the respondents? If so, declare particularly.

To Francis X. Beron, another of said witnesses:

First. Have you been present at the execution of any, and what, deeds or wills of real estate by members of the Cadotte family, or at any investigations made by the United States commissioners in relation to their, or any of their, the said family's claims to real estate in or about the village
187 of Panwayteeg? Or have you any knowledge from these, or any other, and what, sources of the nature of the interest which they or any of the said family had therein?

Second. Whom do you mean by "old Jean Batiste Cadotte?" Do you mean Jean Batiste Cadotte, the father of the brothers Jean Batiste Cadotte, the younger, and Michel Cadotte, and the same person who was the grandfather of Madame Iquoinoise Gornon?

Third. Whom do you mean by Michel Cadotte, your father-in-law? Do you mean the son of Jean Batiste Cadotte, the elder, and brother of Jean Batiste Cadotte, the younger? If not, whom else? Who were his father and mother, and when did he die?

Fourth. With regard to what any one may have told you, distinguish particularly in all cases whether they told you of the thing as occurring within their own knowledge, or as having heard of it from some other person? And if so, from whom?

Fifth and previous interrogatories: Distinguish in the same way as last question as to your means of knowledge; and state—

1stly. What was the quantity of land owned by Jean Batiste Cadotte, the elder, and where situated.

188 2ndly. Have you, or not, heard that he owned a lot at Panwayteeg, bounded in front by the river Ste Mary, on the east side by a lot formerly belonging to Jean B. Dubois, and on the west side by a lot formerly belonging to Charles O. Ermantinger, the same being fifteen rods wide and eight acres deep, which lot so bounded afterwards belonged to Messieurs Lyman and Truman Warren, whose claim was enquired into and confirmed by the said United States commissioners?

3rdly. Was or was not said lot his own absolute property, forever free from rent? If not, specify the interest which he had.

4thly. Do you or not know, or have you or not heard, that the said Jean Batiste Cadotte, the elder, held his real estate as an inferior proprietor, or as the tenant of any, and what, seigneur "a titre de redevances," subject to payment of rent for a term of years, or in any other way less beneficial than as his own absolute property, forever free from rent? If so, state how much land he so held, where was it situate, and what was the nature of his interest, and subject to what rent, and to whom was said rent payable.

5thly. Is it customary in the neighborhood of Panwayteeg to hold real estate "a titre de redevances," subject to payment of rent for a term of years, or in any other way less beneficial than in perpetuity, and free from
189 rent? State particularly any instances which you have known of real estate being so held for inferior interests.

6thly. Did or did not the said Jean Batiste Cadotte, the elder, some time before his death, deed said above-described lot to his sons, Jean Batiste

Cadotte, the younger, and Michel Cadotte, and to their heirs? and which of these two brothers survived the other? and did or did not said lot pass to the daughter of said Michel and her husband, Leon St. Germain, and from said St. Germain to the said Messieurs Warren? If not, how otherwise did it pass, and to whom? and did said Leon St. Germain survive his said wife, the daughter of said Michel Cadotte?

7thly. Look upon the printed book purporting to be the fourth volume of the Reports of the United States Commissioners of Land Claims, especially on that part which at page 835 purports to be a printed copy of a certain French deed of gift, dated 24th May, 1796, from the said Jean Batiste Cadotte, the elder, to his said sons and to their heirs, and say whether or not the purport of the said deed is according to what you have known from other sources with regard to the said property.

Sixth. Have you or not heard of an old French fort and the remains of some other French buildings on the north or Canadian side of St.
190 Mary's River, and near the Sault Ste Marie? Do you remember the portage at the Sault before the canal was made? Whether was the portage on the north side or the portage on the south side the shortest, best, and most used before the canal was made?

Lastly. Do you know of anything which can benefit the respondents? If so, declare particularly.

The above cross-interrogatories are settled by consent, all notice and other formalities being waived and the testimony to be admitted subject, only to objection on the ground of competency and relevancy. Sep. 17, 1862.

J. M. HOWARD, *Sol'r for Pet'rs.*
ALFRED RUSSELL, *U. S. Dist. Att'y.*

191 In answer to the first interrogatory the witness, Francis X. Biron, says he was seventy-five years old last January; that he was born in "St. Reges," Lower Canada; that he has been engaged in mercantile business for himself and others the principal part of his life; that he was educated in the French and Latin—a grammatical education in each.

To the second interrogatory says: His father-in-law's name was Michael (the petit) Cadotte, and that he was a nephew to old John Baptiste Cadotte, the elder, of Saut Ste Marie, Michigan, and that his father-in-law was a son of the brother of the said old John Baptiste Cadotte.

To the third interrogatory says: He has so answered, and did not know the said Cadote, the elder; that Michael Cadotte and John Baptiste Cadotte were sons of the said old John Baptiste Cadotte, the elder, with whom this deponent was acquainted, and there was one that died at Montreal, called "Augustine" Cadotte he thinks, and another by the name of Joseph Cadotte by another (femme) woman or wife; that he was acquainted with the said John Baptiste, junior, Michel, and Joseph at Saut Ste Marie, in the county of Chippewa and in the State of Michigan, from A. D. (1810) eighteen hundred and ten until about the time of their death; that he was not
192 personally acquainted with the John Baptiste, junior; that he, this deponent, has conversed with them respecting their father; that is, with Michel only.

To the fourth interrogatory, answering, says that the said Michel Cadotte told him that his father, old John Baptiste Cadotte, to Saut Ste Marie, before the taking of Quebec, in the time of the French, about the year seventeen hundred and fifty; that he, deponent, does not know with whom he, the said old John Baptiste Cadotte, came to Saut Ste Marie; that Michel did not tell him, this deponent, that said Michel told him his father, old John Baptiste Cadotte, came from near Montreal; that he came as a voyageur or guide; that the French had possession of the post when his

father arrived; that the said Michel further told him, this deponent, that Henry, the traveller, was taken prisoner by the Indians, at Michilimacinac, at the time of the Indian massacre of the garrison, and that his father, the said old John Baptiste Cadotte, ransomed the said Henry, he having been previously brought here by the Indians; that old John Baptiste Cadotte's "femme" or wife was an Indian woman, of Saut Ste Marie by the Christian name of "Astasie;" that if this deponent ever heard her Indian name he has forgotten it. The names of the children were as follows: John Baptiste Cadotte, jr, and Michel Cadotte, Augustine Cadotte.

193 In answer to the fifth interrogatory, says that his father-in-law told this deponent that he, this deponent's father-in-law, was in the employ of old John Baptiste Cadotte, at Saut Ste Maries, for two years. He then took out fits from said old Cadotte and Henry, the "traveller," and in company with Michel Cadotte, a son of old Cadotte, went into the interior and wintered together, and brought their returns to this place, and thus continued in the employ of said Cadotte and Henry for two years. That they were engaged in the Indian trade exchanging their goods for peltry and furs.

Further, this deponent says that he has heard his father-in-law say that old Cadotte came to the Saut as a trader, and that he has also heard the said Michel Cadotte, son of old Cadotte, say the same thing. Further, that he has heard his father-in-law say that his uncle, old John Baptiste Cadotte, told him that there was an officer in the time of the French at the Saut by the name of De Repentigny, and that the said Repentigny was at the post, at the Saut, at the same time he, old Cadotte, was at Saut Ste Marie. Further, that his father-in-law told this deponent that old John Baptiste Cadotte told him that Saut Ste Marie was a "seignory," and that it included

194 the old post and a great distance below and above the same, and that the same belonged to De Bonne long ago before the time of the English. Further, that this "seignory" had been transferred by the said De Bonne, but to whom he did not say; that he, old Cadotte, was not sent here expressly to take charge of the post, but got possession after he came here, and commanded the post; also that old Cadotte was a partner of Alexander Henry in the fur trade. Further, that he understood from his father-in-law that old Cadotte had always said that this place was a "seignory," and that he, Cadotte, had command of the post of the men, the canoes, voyageurs, goods, portage, and Indians connected therewith. Further, that the said "Seignory" belonged to the said De Bonne, and he had transferred it, but to whom he did not say.

In answer to the sixth interrogatory says that he has never seen the old fort erected by the French at Saut Ste Marie, but has seen the place occupied by old Cadotte, which was called the "fort;" that all trading stations were called "forts;" that this deponent saw the remains of this old fort in the year eighteen hundred and ten. This deponent saw the foundation timbers of a house, and root house, and a building occupied by one Piquette, which was a part of the old post occupied by old Cadotte.

195 That this old post was a little east of the present fort and where the stables of the present fort stands, and a portion of this old fort ground is now enclosed by the pickets enclosing the present fort. The old fort was a little east of the present Fort Brady, and a portion of it within the present enclosure of Fort Brady. That this old fort, occupied by old Cadotte, was east of the ravine, which is a little west of the present fort; that there was an old portage running from the old fort to the head of the rapids; that it crossed the canal above the locks. That this deponent passed over this portage in the year eighteen hundred and ten.

(Signed) F. X. BIRON.

In answer to the first cross-interrogatory, says that he was not present at the time of any conveyance of real estate by the Cadotte family; I have heard talk about commissioners of the United States for the purpose of settling land claims, but was never at their meeting; that he has no knowledge of the nature or character of the interest of the Cadotte family to lands at Saut Ste Marie; this deponent has heard of a claim that Michel Cadotte, a son of old Cadotte, claimed; that he obtained from a brother that died
196 near Toronto, by the name of John Baptiste Cadotte, junior; old John Baptiste Cadotte, was the father of John Baptiste Cadotte, jun'r, and Michel Cadotte, and the same person who was the grandfather of Madam Archange Gurnon, who is the wife of Lewis Gournon, senior; Michel Cadotte, my father-in-law, was a nephew of old John Baptiste Cadotte, and a son of a brother of old John Baptiste Cadotte; his father and mother were of Montreal; this deponent never knew them, and he, my father-in-law, died some twenty years ago.

The fourth interrogatory was withdrawn.

5th. Withdrawn as to the means of deponent's knowledge.

1st. I only know the place claimed by old John Baptiste Cadotte, but do not know the depth; it was the same place described before; I know nothing about his title; old John Baptiste Cadotte took possession as all the rest of us take possession; his wife was an Indian woman, and he therefore claimed possession of some piece land.

2ndly. I have not heard that he owned a lot as described in the fifth cross-interrogatory; the piece described must be the piece that grand Michel Cadotte gave to his children. This deponent does not know the size of it on the river, nor the depth. The children were Messrs. Warren, sons-in-law to the said Cadotte. This deponent has heard that there was
197 a claim confirmed to said Warrens by the United States commissioners.

3rd. The Warren lot must have been the property of old John Baptiste Cadotte, for he had no other. This deponent knows nothing about rent, or of there being any rent on the same, nor of Cadotte's absolute ownership of the same.

4th. This deponent says he does not know, nor has not heard, that old Cadotte held said lot under any other person, but has heard that he occupied it just as others occupied lands here. It is true he has been told that old Cadotte said there was a "seignory" here, but how old Cadotte held this deponent does not know, nor never heard.

5th. This deponent says that it is not customary at this place to hold land subject to rent, nor for a term of years. The custom has always been to get possession and hold it until those holding were obliged to purchase from the government.

6th. Further, this deponent says that he does not know, nor has never heard that old John Baptiste Cadotte gave this land to any one, but thinks John Baptiste Cadotte, junior, gave the lot to Grand Michel Cadotte, because Grand Michel afterwards gave it to his son-in-law, Leon St. Germain, the husband of his daughter, Margaret. Further, this deponent says that
198 Grand Michel Cadotte survived John Baptiste, his brother, several years. This deponent says that he has heard that the said Leon St. Germain, after getting possession as before stated, left this place for Montreal, and that before he left he gave his brothers-in-law, the two Warrens, power to take possession of the lot, and to go on and perfect the title thereto. Further, that the said Leon St. Germain did not survive his wife, the said Margarett.

7th. The printed deed exhibited to this deponent is according to this deponent's idea of the way the lot passed, but he never heard any one say that

such was the case, nor never knew before that there was any such deed given.

In answer to the sixth cross-interrogatory, says that he has never heard of any French post or French fort on the Canada side of Saut Ste Marie River, opposite Saut Ste Marie, nor of the ruins of any ancient French buildings. The portage on the north side was the shortest, but all the travellers from the south went up on the south side. The portage on the south side was principally used, but the north a part of the time to escape paying duties to the States.

To the last interrogatory, says: He knows of nothing further than
199 he has stated that would be of benefit to the United States.

(Signed) F. X. BIRON.

In pursuance of the foregoing stipulations I, George W. Brown, at the Saut Ste Marie, in Chippewa County, proceeded to take the depositions of the above-named witness, to wit: "Francis X. Biron." The testimony of said witness was written down by me in his presence, and carefully read over to him before signing; it was then signed by the witness in my presence. Before proceeding to testify said witness took the following oath, viz: You do solemnly swear that the testimony you shall give in this case shall be the truth, whole truth and nothing but the truth, "so help you God;" which oath was administered by me. I furter certify that "Samuel Ashman" acted as an interpreter for the said witness, Francis X. Biron, who does not speak English, but who speaks French; and that he was duly sworn to interpret the language of the witness fully and truly before the witness commenced to testify.

I further certify that having finished taking said deposition, and after the signing of the same by the witness, I attached the same to the interrogatories and stipulation, and that the package is to be delivered to the
200 clerk of the district court of the United States for the district of Michigan.

Saut Ste Marie, Chippewa County, the 2nd day of October, 1862.

(Signed) GEO. W. BROWN,
Notary Public in and for Chippewa Co., Michigan.

201 The witness, Louis Gurnon, being by me duly sworn, deposed as follows:

In answer to the first interrogatory, answering, says that his name is Louis Gurnon; that he is seventy-three years old; that he has always resided at Saut Ste Marie, in the county of Chippewa, in the State of Michigan.

2d. In answer to the second interrogatory, answering, says that his wife,s father was John Batiste, the younger, a son of old John Batiste Cadotte; that John Batiste Cadotte, the younger, died at Fort George, in Upper Canada, and that John Batiste, the elder, died at Saut St. Marie; that witness was six or seven years old when Cadotte, the elder, died; that Cadotte, the younger, died during the war of 1812.

3rd. In answering to the third interrogatory, answering, says that the children of John Batiste Cadotte, the elder, grandfather of Madam Gurnon, were as follows: John Batiste Cadotte, the younger, the father of Madam Gurnon, Grand Michel Cadotte, and Augustine Cadotte. Also two daughters, Angelique and Mary. John Batiste, the "younger," father of Madam Gurnon, died at Fort George, Upper Canada, during the last war with England, in 1812. That Grand Michel died at La Pointe, Wisconsin, in
202 about the year of 1852. Augustine died in Montreal about sixty years ago, while attending school there. That both of the said girls

died, while at school in Montreal, about five years after their said brother Augustine died.

4th. In answer to the fourth interrogatory, answering, says that the first wife of old John Batiste Cadotte was an Indian woman of Saut St. Marie, and by the name of Eyn-a-wanse, her name in French would be Estasha; that she died at Montreal at a very advanced age; the exact age this deponent could not state, but knows that she was a very old woman when she died.

5. In answer to the fifth interrogatory, answering, says that the mother of Madam Gurnon, witness's wife, was, before her marriage to John Batiste Cadotte, the younger, Gruetta Piquette; that Madam Gurnon's father and mother resided at the Saut the most of their lives; that her mother died at the Saut about ten years ago; that Madam Gurnon's mother claimed a piece of land in the village of Saut Ste Marie; and the same piece once claimed by old John Batiste Cadotte, and afterwards by John Batiste, the younger, and after his death by Madam Gurnon's mother.

203 6th. In answer to the sixth interrogatory, answering, says that he has seen old John Batiste Cadotte. He saw him at Saut Ste Marie; that he recollects the circumstance of his dying, and, as near as he can recollect, it was sixty-five years ago.

7th. In answer to the seventh interrogatory, answering, says that he does not recollect any particular conversation with John Batiste Cadotte, the younger, in regard to his father, old John Batiste Cadotte's, having come to the Saut in company with any one, but recollects of having heard it said, and has heard him say, that he came as a voyageur; that he landed first at Mackinaw; that there was a French officer here about the same time. Cannot state positively that he heard John Batiste, the younger, say that his father, old John Batiste, came with this French officer, but knows that they came about the same time, and that they were in some way connected about the fort that the said officer built, and that after the said officer went away old John Batiste Cadotte took possession, and ever afterwards held it, until it was taken possession of by his son, John Batiste Cadotte, the younger, and, after his death, by Madam Gurnon's mother; that this officer's name was De Repentigny, or that was the name by which they used to speak of him; that he has heard a great many Indians speak

204 about this French officer, De Repentigny; that he owned the fort, that he built it, was talked of as a matter of fact that no one disputed; that he cannot state positively how many buildings there were in the fort, as the most of them were burned before the deponent was born, but has heard that there were four or five, and has heard that the said officer, De Repentigny, built four, and he should judge there was at least four, judging from what he has himself seen of the remains. That he has heard, either from John Batiste Cadotte, the younger, or from some one else, that the buildings in the fort were burned after they came into the possession of old John Batiste Cadotte, and that the said French officer, De Repentigny, went away and left everything in possession of old Cadotte.

8th. In answer to the eighth interrogatory, answering, says that old John Batiste Cadotte was the great fur trader of this country for a great many years; that the witness got this information from the family, also from the Indians.

9th. In answer to the ninth interrogatory, says the old French fort cannot very well be described, as there is but one or two remnants of it left. The place where it stood is just below the present fort, called Fort Brady.

205 My earliest recollection of this old French fort is, that there had been several buildings, and that several of them had been burned. I think all but one. The old portage road, as long ago as I can recollect, ran from the

river below the rapids, starting just above the old fort, crossing the canal constructed a few years ago just above the upper lock, to the head of the rapids. Both the old French fort aforesaid, and the portage just described, were on this, the American, side of the river.

(Signed) LOUIS GOURNON.

3rd. In answer to the third cross-interrogatory, answering, says he did know Michel Cadotte, the uncle of Madam Gurnon; that this uncle Michel had a son by the same name, but that old John Batiste Cadotte never had a brother by the name of Michel.

5th. In answer to the fifth cross-interrogatory, answering, says that the christian name of Madam Gurnon's mother was Gruette; that she claimed about two acres front on the river, and running back indefinitely, and situate below and taking in part of the present Fort Brady, and embracing
206 all of what was called the old French fort; that he cannot say what right was confirmed to the family by the commission of 1820; that in regard to the nature of her interest it was the same as others, she had possession and claimed title. He never heard anything about paying rent.

7th. In answer to the seventh cross-interrogatory, answering, says that John Batiste Cadotte, the elder, came to the Saut when he was a young man. Never heard his age, but heard it said that he was a young man when he came; that he became connected with the said Repentigny on his arrival, or very soon after. That this information was not obtained in any particular conversation, but was obtained in conversation with various individuals. They are facts; that he cannot tell precisely how or when he obtained them. That from conversations and facts, or things that he has seen, he is disposed to believe that the French officers, De Repentigny and De Bonne, had some title to the property afterwards claimed by the Cadotte family; that he does not know of any of De Repentigny's representatives residing at Saut Ste Marie; that he never knew nor heard any one say that the French fort, built by De Repentigny, belonged to the government, but, on the con-
207 trary, always supposed, from what he heard, that it belonged to the said officers, De Repentigny and De Bonne.

8th. In answer to the eighth interrogatory, answering, says that the land owned or claimed by John Batiste Cadotte, the elder, was what might be called ordinary farming land, and situated on the Saut St. Marie River, two acres in front, and running back indefinitely; that he has never heard that old John Batiste Cadotte owned a lot in "Panwayteeg," bounded as described in the eighth interrogatory, but that he owned or claimed a piece of land covering the piece described; that he never heard that the said John Dubois owned or claimed any land at the said place, called "Panwayteeg;" that he has always heard that old John Batiste Cadotte took possession after the French officers aforesaid went away, and that he was allowed, by virtue of having married an Indian wife, a chief's danghter, to hold and occupy the said piece of land as his own, without the payment of any rent; at least this deponent never heard of his paying any rent, or of any one's claiming any rent for the use of the same; that he has never heard of any person's paying rent for the use of land here, in this place, "Panwayteeg;" that he never knew nor heard of old Cadotte's claiming any other piece of land at
208 or near this place, nor any other piece in this country; that he has never heard that old John Batiste Cadotte deeded the said piece of land to his sons John Batiste and Michel, but it was very lately he was told about some conveyance; that the said Michel survived his brother John Batiste, but that he never occupied said piece of land; that it was held and occupied after the death of the said John Batiste, the younger, by Madam Gurnon's mother, as before stated. (The printed book was not presented.)

9th. In answer to the ninth cross-interrogatory, answering, says that he does recollect the portage before the canal was constructed; that the shortest, best, and in fact about the only one used ever since he could remember was upon the south side of the present St. Mary's Falls ship canal, on the American side of the river.

10th. In answer to the tenth cross-interrogatory, answering, says that he does not know of any other matter or thing that would be of advantage to either party.

(Signed) LOUIS GOURNON.

209 The witness Iquoinoise Gurnon, wife of Louis Gurnon, being by me duly sworn:

1st. In answer to the first interrogatory, answering, says that she is sixty-six years old; that she is the wife of Louis Gurnon; that she has always resided at Saut St. Marie, in the county of Chippewa, in the State of Michigan.

2d. In answer to the second interrogatory, answering, says that John Batiste Cadotte, the younger, was her father; that he died near Fort George, in Upper Canada, during the war between the United States and England, in 1812; that her father was a son of old John Batiste Cadotte.

3d. In answer to the third interrogatory, answering, says John Batiste Cadotte, the elder, was her grandfather; that old John Batiste had three boys and two girls by his first wife, as follows: John Batiste Cadotte, the younger, and Grand Michel Cadotte and Augustine Cadotte, and the two daughters Angelique and Mary, both of whom died at Montreal very young, while attending school there. Augustine also died at Montreal while attending school, and within a few years of each other, and some fifty-five or sixty years ago, it may have been sixty-five years ago. John Batiste Cadotte, the younger, father of Madam Gurnon, died near Fort George,
210 Upper Canada, in 1812, and Grand Michel Cadotte died at La Pointe, in Wisconsin, about ten years ago.

4th. In answer to the fourth interrogatory, says that the first wife of old John Batiste Cadotte, her grandfather, was an Indian woman, of Saut St. Marie, and by the name of Eynawanee, her name in French would be Estasha; that she died at Montreal; that she was very old when she died; that she must have been sixty-five years old when she died.

5th. In answer to the fifth interrogatory, says that her mother's name before her marriage was Gruette Piquette; that her father and mother lived at Saut Ste Marie, until just before her father died; he went to Fort George, and died there; that her mother always lived here, and died here about ten years ago; that her mother claimed a piece of land at the Saut, and the same piece that old John Batiste Cadotte claimed, and the same that her husband, John Batiste Cadotte, always claimed.

6th. In answer to the sixth interrogatory, says that she does not recollect of having seen her grandfather, old John Batiste Cadotte, the father of her father.

7th. In answer to the seventh interrogatory, answering, says that she has heard some one say that John Batiste Cadotte, the elder, came to
211 this place, Saut Ste Marie, as a voyageur, but cannot say for certain that she heard her father, John Batiste, the younger, say so; that she has heard her father say, or her mother, that old John Batiste, deponent's grandfather, came to this country as a voyageur; that two French officers, one by the name of De Repentigny and the other by the name of De Bonne, came about the same time; that she has heard her parents or some others say that the said officers built a fort or post; that the said officers went away a great many years ago and left old John Batiste Cadotte, her grand-

father, in possession of the fort that the said officers built; that she recollects of hearing the old inhabitants speak of these officers very frequently as having a large tract of land, but never heard how much, and that they built the fort or post and went away, leaving her grandfather in possession; that her grandfather retained possession until after he gave it to John Batiste Cadotte, her father; that her father occupied until he went away, about the year 1810; and that her mother then used and occupied it until she died, about ten years ago, that is, she continued to use and occupy some portion of the same; that she has heard, but whe her from her father or
212 mother or others she cannot say, that there was two buildings in the fort when the said officers went away, and that afterwards some of them was burned.

8th. In answer to the eighth interrogatory, answering, says that she has heard from others that her grandfather became one of the largest fur dealers in the country after the said French officers went away, and that after her grandfather went away her father was engaged for a long time in the same business.

9th. In answer to the ninth interrogatory, answering, says that the old French fort referred to was located just below the present fort, (Brady;) that she has seen the remains of the old fort, or places where there had been a fire, two or three such places, and that she was told by her mother or others that those places were once occupied by buildings and constituted the old fort built by the said French officers, De Repentigny and De Bonne; that the portage, as long ago as witness can recollect, was principally on the south side of the St. Mary's Falls ship canal, that it crossed the canal somewhere above the upper lock.

(Signed) ARCHANGE GURNON.

3d. In answer to the third cross-interrogatory the witness, answer-
213 ing, says that she knew Michel Cadotte, her uncle; that he had a son by the name of Michel, but that old John Batiste Cadotte, her grandfather, never had a brother by that name, at least she never heard any one speak of any such individual.

5th. In answer to the fifth cross-interrogatory, answering, says that the christian name of her mother was Gruette; that she claimed about two acres in front on the river and running back a great way, can't tell how far; that it embraced all of the aforesaid French fort grounds, and a part of present fort (Brady) grounds; that she cannot state what rights were confirmed to the family by the commission referred to; that all she knows about her mother's right, one way or the other, is she has heard her mother say that it belonged to her, that she got it from her husband, John Batiste Cadotte, the younger, and that he got it from his father; that she has never heard her mother say anything about paying rent.

7th. In answer to the seventh cross-interrogatory, says that she never heard any one say how old old John Batiste Cadotte was when he first came to Saut Ste Marie, but has heard some one say that he was very
214 young; she has heard that he came as a voyageur, and in some way connected with De Repentigny, and that he was always connected with the said De Repentigny in some way, as long as the said De Repentigny remained here, but this deponent cannot state whether this information was obtained from her mother, father, or old inhabitants; that she has never heard of any of the said officer's relatives or representatives having been here to claim any part of the said claim; that she never heard any one say or claim that the old French fort spoken of belonged to the French government, but that the said officers, De Repentigny and De Bonne, claimed that the same belonged to them, and that, after they went away and left it,

her grandfather took possession, and that afterwards the father of witness's grandfather's wife gave this piece of land to him, old John Batiste Cadotte.

8th. In answer to the eighth cross-interrogatory, says that the land owned by her grandfather was ordinary farming land, quite stony, some of it; that he claimed two acres on the river and running back she cannnot tell how far; that she has never heard about old Cadott's owning or claiming any such piece of land as described in the eighth cross-interrogatory, but that
215 the piece that he claimed embraced the piece described; that she never heard that John Dubois owned or claimed any land at Panwayteeg, this place; that she has always understood from what she has heard, that old John Batiste Cadotte, her grandfather, took possession or was left in possession when the said French officers went away, and that they never came back, and that old John Bastiste was allowed to hold and occupy the same as his own by the old Indian chief, the father of his wife; that this deponent says, as she has before said, she never heard of any of the people here paying rent; that she never heard that old Cadotte, her grandfather, claimed any land anywhere else near here, or anywhere, except the piece described; that she has heard that old Cadotte, her grandfather, gave said piece of land to his boys; that Michel did survive her father, but that he never occupied the said piece of land; that her mother held it until her death, about ten years ago, or claimed to hold it.

9th. In answer to the ninth cross-interrogatory, answering, says that she does recollect the portage before the canal was constructed, and that the shortest, best, and, you may say, the only portage used was on the south side of the St. Mary's canal, and on the American side of the river;
216 that she knows of nothing further that would be of interest or benefit to either party.

(Signed) ARCHANGE GORNON.

In pursuance of the foregoing stipulation I, George W. Brown, at Saut Ste Marie, in the county of Chippewa, and in the State of Michigan, proceeded to take the testimony depositions of the above-named Louis Gurnon and "Iquoinoise" Archange Gurnon, witnesses. The testimony of the said witnesses was written by me in their presence, and carefully read over to them, and corrected by me in their presence, before signing. It was then signed by the witnesses in my presence, the said Archange Gurnon taking hold of the pen while I wrote her name, and then acknowledged the same to be her own signature. Before proceeding to testify, the said witnesses took the following oath, viz: "You do solemnly swear that the testimony you shall give in this case shall be the truth, the whole truth, and nothing but the truth, so help you God;" which oath was administered by me. I further certify that John Gurnon acted as an interpreter for the said witnesses, Louis Gurnon and Archange Gurnon, neither of whom speak much English, but both speak Indian and French, and that the said John
217 Gurnon was by me duly sworn to interpret the language of the witnesses fully and truly, before the witnesses commenced to testify. I further certify that having finished taking said depositions, and after the signing of the same by the witnesses, I attached the same to the interrogatories and stipulations, and that the package is to be delivered to the clerk of the district court of the United States for the district of Michigan.

State of Michigan, Chippewa County, 24th day of Nov., A. D. 1862.

GEO. W. BBOWN, *Notary Public for Chippewa County, in the State of Michigan.*

219 GUADALOUPE DEPOSITIONS.—(Filed 25th October, 1862.)

Translation.

Direct interrogatories on the part of said petitioners.

First. What is your name and age, where do you reside, and what is your vocation or occupation? And if you answer that you reside on the island of Guadaloupe, say how long you have there resided?

220 Second. Are you acquainted with the above-named petitioners, viz: Louise Pauline de Repentigny, Lizette Antoinette, widow of Pierre Muerville Bonfils, Josephine Lucrece, widow of Cyprian Clavie, or either of them, and which of them; and how long have you known them or any of them, and at what place?

Third. Were you ever acquainted with the mother of the said Louise Pauline, Lizette Antoinette, and Josephine Lucrece? And if so, say who she was, where she resided, how long a time, and where you were acquainted with her, and when and where she died.

Fourth. If you have answered that her said mother was, before her
221 first marriage, Maria Antoinette Nicole Aimee Gauthaume, and after the death of her first husband the widow of Antoinette Camille de Repentigny, and that she resided at Petit Bourg, on the island of Guadaloupe, say how many husbands she subsequently had, what were their names, and where they resided.

Fifth. Were you acquainted with her said first husband Camille de Repentigny? And if so, where did you become acquainted with him, and where did he reside? State particularly at what place and how long you knew him. What was his occupation or avocation, and when and where did he die?

Sixth. Did you ever become acquainted with Gaspard de Repentigny, the father of said Camille? If so, say where you knew him and at what
222 time as accurately as you can recollect.

Seventh. If you ever had any conversation with said Gaspard respecting his descent and his family, please relate what you learnt from those conversations on the following subjects, viz: Who was his father and where was his father born, and who was his mother, and where was she born? Where were they married, and had they any other child except the said Gaspard? Whas his father ever in the military service of France in Canada? If so, what was his military rank; at what post was he stationed; and if said Gaspard gave you any information as coming from his father respecting a place known as the Sault Ste Marie on the river Ste
223 Marie, between Lake Superior and Lake Huron, please state particularly what said Gaspard told you. Relate all you remember to have heard said Gaspard say about his father having an interest in a fief, or seignory at said Sault Ste Marie; all he said about his father having settled there, clearing or cultivating the same or leasing it to others for cultivation; all he said about his father's services in the war between France and England which resulted in the conquest of Canada by the English, and where his said father went at the close of the war; all he said about his father's going to France and being sent by the French government to Senegal, on the coast of Africa, as governor there; the time and place of his
224 father's death; who were the children of his father's marriage, and whether said Gaspard was not the sole child of his marriage.

Eighth. Relate also what you have heard said Camille say on each of the subjects embraced in the above seventh interrogatory?

Ninth. Relate also what you have heard said widow of said Camille, (*i. e.* the said Maria Antoinette Nicole Aimee Gauthaume,) the mother of said

three first named petitioners, say on each of the subjects embraced in said seventh interrogatory.

Tenth. If you have stated that you learned either from said Gaspard, said Camille, or said widow (Madame Camille,) that said Gaspard had
225 children other than said Camille, please state what other children he had, and if they are dead where did they die, what was the time of their death, and any one of them was ever married.

Eleventh. Did you know the mother of said Camille? If so, please state when and where you knew her and how long. Relate particularly what you ever heard her say on each of the subjects embraced in said seventh interrogatory. Did you ever see her in company with said Madame Camille or with the said three petitioners, Louise Pauline, Lizette Antoinette, and Josephine Lucrece, or either of them? If so, when and where? And did she or did she not treat or speak of said widow Camille as her daughter-in-law, and said three last named ladies as her granddaughters, and the
226 granddaughters of said Gaspard and said Madame Camille as their mother? Relate particularly.

Twelfth. To whom was Madame Gaspard married after the death of said Gaspard; and where did she reside?

Thirteenth. If you have answered that Madame Gaspard was married to the Count de Marchais, please state where and at what time; whether the count remained with her at Guadaloupe and how long, whether they removed to France, and if so, to what place, and when and where she died; and when and where the count died. State particularly.

Fourteenth. State whether you ever were present at any conversa-
227 tion between Madame Gaspard and Madame Camille, or either of them, and the above-named petitioners, Louise Pauline, Lizette Antoinette, and Josephine Lucrece, respecting the three last-named being the lenial descendants of the Chevalier de Repentigny. If so, state what, in substance, was said on that subject to said three ladies or either of them, by said Madame Gaspard or Madame Camille, and whether or not in your conversations with them they habitually spoke of said three ladies as the lenial descendants and heirs-at-law of the said Chevalier.

Additional interrogatories to Auguste Thionville, now or hereafter a notary public on the island of Guadaloupe.

Fifteenth. Please answer, in addition to the answers you have already given, whether in the month of March, A. D. 1841, you were an act-
228 ing notary public on the island of Guadaloupe. And if so, how long had you been such notary on said island? State what had been your opportunities to be acquainted with the family of the petitioners, the said Louise Pauline, Lizette Antoinette, and Josephine Lucrece; whether you had transacted business for them or any one of them, or for their father, or for their grandfather; what kind of business was it; and what degree of intimacy existed between yourself and them or any or them. Relate particularly what were your opportunities of acquaintance with said three ladies or their father, their mother, their grandfather, or their grandmother. Look upon the paper writing or written document attached to this commis-
229 sion commencing with the words "Pardevant Mr. Auguste Thionville, fils aine et son collegue notaires a la Pointe a Pitre Guadeloupe, soussignes," signed by 12 persons, and among them "A. Thionville," on the cover of which are written the words "Exhibit 8 a, filed with moster, December 18, 1861, Geo. G. Bull master in chancery, U. S. c't court, district of Michigan," and state whether the signature, A. Thionville thereto is your genuine handwriting, whether the other signatures thereto are the genuine signatures of the persons therein named, and whether you were acquainted

with said persons and their handwriting, and whether you saw them sign the said paper. Whether the said paper is a notarial act of your own, drawn up and signed according to the laws in force at Guadaloupe, at the
230 date thereof or not? State whether or not said paper was drawn up at its date (March 13, 1841,) by you or in your presence from declarations then made to you by the persons therein described as the appearers, and whether the said three ladies who are petitioners, and their mother, Madame Camille, and her then husband, all or any of them, were present before you? State whether the said document was on that occasion read over to the ladies or either of them, or to said Madame Camille or her husband, and what did Madame Camille or her husband then say touching the truth or falsity of that document? Do you know Alexis Frederic Favarger, formerly of said island of Guadeloupe, and how long have you known
231 him? State, if your ecollect, whether the said document was delivered to him in the year 1849, or at any time, by said Madame Camille (then Madame Monpezat,) and if so, what other persons were then present, and for what purpose was it delivered to him? Are the seals upon the cover of said document all genuine, including that of Mr. Jubelin, the governor? Of what functionaries does the government of the island of Guadeloupe consist? And is the mode of certifying and authenticating said document the legal and usual mode of certifying and authenticating the acts of said government and of persons acting under its authority? Did you ever see in the possession of said Gaspard or of his son the said Camille de Repentigny, or of said Madame Gaspard, or of said Madame Camille, at any time, any
232 documents relating to the births, marriages, and deaths of the family of said Chevalier de Repentigny? If so, describe the documents you saw and in whose possession they were. And do you know any other matter or thing which if disclosed would tend to the benefit and advantage of the petitioners in this case? If so, set the same forth as fully and particularly as if thereto specially interrogated.

(Signed) J. M. HOWARD,
Sol'r and of counsel for s'd Petitioners.

It is stipulated that the foregoing direct interrogatories be allowed, subject to the stipulation of April, A. D. 1862.

(Signed) J. M. HOWARD,
Sol. for Petitioners.

April 25, 1862.

(Signed) ALFRED RUSSELL,
Dist. Att'y U. S. for Dist. of Mich.

233 *Cross-interrogatories on the part of the respondents.*

First. Are you aware of the nature and object of the proceedings in this matter? Are you connected with the petitioners, or any and which of them in any and what way? Are you interested in the success of the petitioners in any and what way, directly or indirectly, pecuniarily or otherwise? and if so, to what extent? Set forth the same and all circumstances
234 and particulars thereof, fully and at large.

Fifth. If you have answered that you were acquainted with Antoine Camille le Gardeur de Repentigny, and with the date and place of his death, please to state whether he had any and how many brothers or sisters, and the times and places of their and of the said Camille's respective births and deaths, and whether they or either or any of them are reputed to have made any will or conveyance of property of any kind, or to have had children, or

to have been married. Declare the truth of the matters enquired after by this interrogatory according to the best of your knowledge, information, and belief, with your reasons fully and at large.

Sixth. If you have answered that you were acquainted with Louis
235 Gaspard de Repentigny, please to state whether he had any and how many brothers or sisters, and the times and places of their and of the said Gaspard's respective births and deaths, and whether they or either or any of them were reputed to have made any will or conveyance of property of any kind, or to have had children, or to have been married. Declare particularly.

Seventh. Relate all you remember to have heard said Louis Gaspard say as to the date at which, and the reasons for which his alleged father, Louis le Gardeur de Repentigny, the elder, left Canada, and his alleged property at the Saut Ste Marie in particular, and whether and why and how long he, the said Louis le Gardeur de Repentigny, the elder, adhered to his allegiance to the crown of France after the conquest of Canada by
236 the British, and whether the said Louis le Gardeur, the elder, is reported to have made any will or conveyance of any kind of property of any kind. Declare particularly the truth of the matters enquired after by this interrogatory, according to best of your knowledge, remembrance, and belief.

Fourteenth. Have you always heard the ladies referred to in the petitioners' direct interrogatory No. 14 mentioned not only as the "lineal descendants," but as the "only" or "sole lineal descendants" of the said Louis le Gardeur, the elder? Have your never heard of any other person or persons of certain or uncertain legitimacy, as also reputed to be his lineal descendant or descendants? If so, relate particularly their names, parentage,
237 and last known or supposed place of abode, respectively. Declare the truth according to the best of your knowledge, information, and belief.

Lastly. Do you know or can you set forth any other matter or thing which may in anywise tend to the benefit of the said respondents? If so, set forth the same and all the circumstances and particulars thereof, according to the best of your knowledge, remembrance, and belief, together with your reasons at large.

(Signed) ALFRED RUSSEL,
U. S. District Attorney for Michigan.

239 *Answers of Louis Antoine Bénjamin de Boubers Vojeanlieu, Baron de Jonquieres, to the direct interrogatories.*

To the 1st: My name is Louis Antonio Benjamin de Boubers Vojeanlieu, Baron de Jonquieres. I am 75 years old; I reside at present in the commune of Ste Rose, formerly in that of Lamentin; I was formerly a planter and proprietor; I am now a rentier, living on my income; I have been formerly a major in the militia of Lamentin, and ancient municipal counsellor of said commune, and have always lived at Guadeloupe, except rare and short absences in France.

To the 2nd: I have known the petitioners perfectly from their childhood, viz: Louise Pauline de Repentigny, Lizette Antoinette, widow of
240 Pierre Murville Bonfils, Josephine Lucrece, widow of Cyprien Clavie; I know that they inhabit, viz: Mad'e Bonfils, the commune of Lamentin, and the two others that of Petit Bourg.

To the 3rd: I knew equally well Madame Marie Annetoinette Nicole Aimee Gantheaume, their mother. This lady died at Petit Bourg, where she resided in 1850. She was the widow "en premieres noces" of M. Antoine Camille le Gardeur de Repentigny.

To the 4th: She afterwards married, 1st with M. Edme Jean Joseph Miguard, a physician residing at Petit Bourg. 2nd. With M. Pierre Monpezat, plantation overseer, formerly residing at Canal, and after his marriage at Petit Bourg. They are both now dead.

241 To the 5th. I was acquainted with Antoine Camille le Gardeur de Repentigny, the first husband of this lady, as well as with his brothers. He was the father of the petitioners. I was acquainted with him at Petit Bourg and at Capesterre.

To the 6th: I was very well acquainted with Louis Gaspard le Gardeur de Repentigny, the father of Antoine Camille, and the grandfather of the petitioners. He served in the royal marine of France at the same time as my cousins. He afterwards lived at Capesterre, where I knew him. He married a lady called Le Prevost Duquesnel, of Capesterre, who after the death of her husband married for her second husband the Count de Marchais.

242 To the 7th: I know of my own knowledge and by public notoriety, that Louis Gaspard le Gardeur de Repentigny married, as I have said, to Mad'elle Le Provost Duquesnel, left three children, viz: 1st, Louis le Gardeur de Repentigny, whom I knew as an aid-de-camp of General Ernouf; 'tis now 57 or 58 years ago. 2nd. Theodore le Gardeur de Repentigny, both never married, and both died without children. 3rd. Antoine Camille le Gardeur de Repentigny, the father of the petitioners.

To the 8th: This Repentigny and his son Gaspard lived at that place. The latter in his conversations with me often gave me narratives respecting it when he was conversing about the English and the Indians. I have heard Antoine Camille le Gardeur de Repentigny talk in the same way about the

243 concession in question. I cannot on this occasion furnish you with circumstantial details. My memory does not furnish them, but papers and documents exist which prove all these facts, and which must be in the possession of the petitioners.

To the 9th: I have not heard anything particular said upon that subject. Mad'e Marie Antoinette Nicole Aimee Gantheaume, widow of Camille Le Gardeur de Repentigny, repeated to me what her father-in-law and husband had said to me, that they had an immense quantity of land in Canada, and that they were going sooner or later to take possession of it.

To the 10th: Louis Gaspard le Gardeur de Repentigny had no other children except those whom I have named in a preceding question, No. 7.

244 To the 11th: At Capesterre I was acquainted with Madam Louis Gaspard le Gardeur de Repentigny, as I have already said. I know that she married in second nuptials M. Le Comte de Marchais. She was the mother of Antoine Camille le Gardeur de Repentigny, and the grandmother of the petitioners.

To the 12th: This lady married in second nuptials Mons. Le Comte de Marchais. She lived at Capesterre.

To the 13th: This marriage took place at Basseterre about 1814. Some time afterwards M. and Mad'e de Marchais left for France, where they died without children of this second marriage.

245 To the 14th: I have heard this concession in Canada spoken of by Gaspard le Gardeur Repentigny, by his wife, by his sons, by Mad'e Antoine Camille le Gardeur de Repentigny, by the sons-in-law of that lady, and by the petitioners themselves. It is of public notoriety in the colony that the Repentigny family has a claim to make on this subject upon the government which you represent, and for me. This family is now composed only of the petitioners who are the sole legitimate and direct descendants of the Chevalier Comte de Repentigny. Besides, I have already certified, though with less of detail the facts which I have made known. I have certified them in an act of notoriety drawn up by M. Auguste Thionville in this city some twenty years ago. (After having shown to the witness the act of 13th

March, 1841, he says:) I recognize perfectly this act. My signature
246 is affixed to it, and I also recognize that of the other witnesses, who were all my friends or acquaintances, and who are now no more. All which is set forth in this act is most scrupulously exact, and I affirm it anew on this occasion without reserve. This act was signed in my presence by the other witnesses, and after reading the foregoing to him the witness signed the same.

(Signed) BARON DE BOUBERS VOJEANLIEU.

Sworn and subscribed before me at Pointe a Pitre, Guadeloupe, this sixteenth day of August, A. D. 1862.

[L. S.] (Signed) H. THIONVILLE, *U. S. V. Consul.*

Answers of said witness to the cross-interrogatories.

To the 1st: I am acquainted with the nature and object of the claim
247 in question. I was formerly bound in friendship to the Repentigny family, but living at present in retirement, I have not kept up those relations with the petitioners; I merely know that they are alive. I am in no way interested in the success of their suit.

To the 5th: Antoine Camille le Gardeur de Repentigny had no sisters. He had two brothers, Louis le Gardeur de Repentigny and Theodore le Gardeur de Repentigny, both now dead, both unmarried and without posterity. Their deaths took place in the colony; that of Theodore in 1811, and that of Louis in 1821. It is not within my knowledge that they made any will, nor that they are reputed to have ever transferred their rights to the concession of the Sault Ste Marie.

248 To the 6th: Louis Gaspard de Repentigny was an only son. I have no knowledge that he made any will or any transfer of his rights. He left his estate [succession] purely and simply to his children, whom I have already named.

To the 7th: I have but a confused recollection of what I have heard said by Louis Gaspard de Repentigny, his children and grandchildren, respecting the Sault Ste Marie business. I recollect one thing: it is that the concession of this land was made to Louis Le Gardeur Chevalier Comte de Repentigny in recompense of his services to Louis 15th, king of France. I never have heard that Louis le Gardeur Chevalier Comte de Repentigny, whom you call the elder, (l'aine,) made any will or transfer of his property to
249 the detriment of his son Gaspard. Nothing of the kind exists, because none but the petitioners present themselves to claim this concession.

To the 14th: Yes. I affirm anew what I have said in the act of 13th March, 1841, that I have always heard and that it is within my knowledge that the petitioners are the sole heirs and descendants in direct line from Louis le Gardeur Chevalier Comte de Repentigny, their great-grandfather, the original concessee of the land at the Sault Ste Marie.

Finally, I know nothing further touching this affair, and I ask you to refer to the act of the 13th of March, 1841, which is an exact and complete expose of this same affair. And if you will have regard to my personal appreciation, you will be convinced that the rights of the petitioners
250 to the concession of the Sault Ste Marie are perfectly real and legitimate. And after reading the foregoing to him, the witness has signed the same.

(Signed) BARON DE BOUBERS VOJEANLIEU.

Sworn and subscribed at Pointe a Pitre, Guadeloupe, this sixteenth day of August, A. D. 1862.

[L. S.] (Signed) H. THIONVILLE, *U. S. V. Consul.*

Answers of Jean Picard to the direct interrogatories.

To the 1st: My name is Jean Picard; I am 78 years old; I reside at La Pointe a Pitre; I live upon my rents; I was formerly a merchant, afterwards a planter; I am now a rentier; I was heretofore a member of the
251 colonial council of Guadeloupe; I came to this colony in January, 1807; I remained six months at Pointe a Pitre, twenty years at Basseterre, and the rest of the time in the commune du Canal and at Pointe a Pitre.

To the 2nd: I know the petitioners, to wit: 1st, Louise Pauline de Repentigny; 2nd, Lizette Antoinette de Repentigny, widow of Pierre Murville Bonfilz; 3rd, and Josephine Lucrece de Repentigny, widow of Cyprien Clavie; Mad'e Bonfilz resides in the commune of Lamentin, and her two sisters in that of Petit Bourg.

To the 3rd: I also knew Madame Anne Toinett Nicole Aimee Gantheaume, their mother, and I know that this lady lived at Petit Bourg, and that she died in 1850.

252 To the 4th: This lady was married three times; 1st, to Mons. Antoine Camille le Gardeur de Repentigny, a planter residing at Petit Bourg; 2d, to Mons. Mignard, health officer, residing in the same place; 3d, to Mons. Monpezat, an overseer of plantation, residing heretofore at the Canal and after his marriage at Petit Bourg. I know that all these persons are dead.

To the 5th: I knew the first husband of this lady, Antoine Camille le Gardeur de Repentigny. I made his acquaintance at Basseterre soon after my arrival. He settled at Petit Bourg, where he was married to Mad'elle Gantheaume in 1814, and he died six years after, in 1820.

To the 6th: I was perfectly well acquainted with Louis Gaspard
253 le Gardeur de Repentigny, the father of him of whom I have just spoken, and the grandfather of the petitioners; he was of the ancient superior officers of the French marine; I knew him at Basseterre in 1810, possibly before that, my memory does not recall it exactly.

To the 7th: I have often heard Gaspard de Repentigny talk about Canada, where he resided before coming into the colony. In his conversations reference was made to a concession of land made to his father by the king of France in recompense of his military services in Canada. I do not remember what was the rank of the father of Gaspard, nor to what post he was attached, nor the name of the place where the concession was situate of which you speak. I have heard that Gaspard was the only child
254 of his father.

To the 8th: Antoine Camille le Gardeur de Repentigny said nothing in particular to me on the subjects which you have mentioned to me.

To the 9th: I have heard nothing said by his wife, Mad'elle Gautheaume.

To the 10th: Gaspard le Gardeur de Repentigny had three children, with whom I was perfectly acquainted, viz.: 1st, Louis le Gardeur de Repentigny, whom his comrades nicknamed "Paupan," who was "chef de bataillon" of infantry and aid-de-camp to General Ernouf, governor of Gaudeloupe; 2d, Theodore le Gardeur de Repentigny; 3d, and Antoine Camille le Gardeur de Repentigny. The two first died without posterity, and
255 without having been married; the third was the father of the petitioners. Louis died in the colony in 1821. Theodore died about ten years before him, and Antoine Camille died at Petit Bourg on his plantation, the 20th of April, 1820. I fix this last date from information which has been given me.

To the 11th: I was acquainted at Capesterre and at Basseterre with the mother of Antoine Camille. She was a demoiselle (Miss) Le Provost du Quesnel, whose father was the owner of a plantation called Changy. I am

not able to say whether I have seen her in the company of her daughters-in-law and of her grandchildren, the petitioners. These are old circumstances which have escaped my memory.

256 To the 12th: After the death of Gaspard de Repentigny his widow in second nuptials intermarried with Mons. De Marchais.

To the 13th: This marriage took place at Basseterre in 1814. The parties remained at Capesterre, where they sojourned several years; they then left for France, where both have since died, the wife in 1836 and the husband very recently.

To the 14th: I do not remember having been a witness of any conversation between the persons you mention to me on the subjects of the lands in question, I may have been, but I should not dare affirm it as I have done in what concerns Gaspard de Repentigny. What I can say is that in repute at Guadeloupe the three petitioners are the sole descendants in direct

257 line of the Repentigny family.

And after reading the foregoing to him the witness has signed.

(Signed) J. N. PICARD.

Sworn and subscribed before me, at Pointe a Pitre, Guadeloupe, this this thirteenth day of August, A. D. 1862.

[L. s.] (Signed) H. THIONVILLE, *U. S. V. Consul.*

Answers of the said witness to the cross-interrogatories.

To the 1st: I know the nature and object of the present claim. I never had any connection with the members of the Repentigny family; I have had with them only the ordinary relations of society, and I am not

258 at all interested in the success of the petitioners.

To the 5th: Antoine Camille le Gardeur de Repentigny had no sister; he had, as I have already told you, two brothers, Louis and Theodore le Gardeur de Repentigny, who were both born, I believe, in the colony, each of whom died without posterity, and without having been married; I never heard that either of them made a will or transferred to anybody their rights to the concession in Canada.

To the 6th: Louis Gaspard de Repentigny had not, to my knowledge, either brother or sister. I have never heard it said either that he left a will or made any transfer of his rights.

259 To the 7th: I remember, but confusedly, what I heard Louis Gaspard de Repentigny and his sons say respecting their property in Canada. My memory only retains some anecdotes recounted by Louis Gaspard, and which related to his sojourn in Canada. But I remember to have heard it said that the concession of lands in question was a gift made by a former king of France to Mons. De Repentigny, the father of Gaspard, in recognition of his military services. I can say nothing on the subject of the testament or transfer of which you speak to me. They are facts of which I am ignorant.

To the 14th: I can certify that it is of public notoriety that the petitioners are the only persons who present themselves as heirs and descendants in the direct line of the Comte de Repentigny, their great-grandfather,

260 him who received the concession of the lands in question.

Finally. I know nothing further respecting this affair.

And after reading the foregoing to him the witness has signed.

(Signed) J. N. PICARD.

Sworn and subscribed at Pointe a Pitre, Guadeloupe, this thirteenth day of August, A. D. 1862.

[L. s.] (Signed) H. THIONVILLE, *U. S. V. Consul.*

261 *Answers of Charles Narcisse Eugene Johanneton, esq., to direct interrogatories.*

To the 1st: My name is Charles Narcisse Eugene Johanneton. I am sixty-two years old. I reside at Pointe a Pitre. I am a notary public in this city. I arrived in the colony 28th of May, 1827, and since then I have not left it.

To the 2nd: I know the petitioners, to wit: Lizette A. le Gardeur de Repentigny, widow of Mons. Pierre Charles Lucien Murville Bonfilz, residing at Lamentin, on the lands of Mr. William Darrasse, near the road from Lamentin to Ste Rose; 2d, Josephine L. le Gardeur de Repentigny, widow of Mons. Cyprien Clavie; 3d, Louise Pauline le Gardeur de Repentigny; the two latter reside in the commune of Petit Bourg.

To the 3d: I was not acquainted with the mother of the petition-
262 ers, but I knew she was a Miss Gantheaume, and that she was married three times, 1st, to Mons. Le Gardeur de Repentigny, father of the petitioners, next to Mons. Mignard, and the 3d time to Mons. Monpezat.

To the 4th: After having questioned the witness in the same manner as the others he answered as follows: I cannot answer to the other questions which you have put me, because they relate to facts which are unknown to me. I can only tell you that on the 13th of March, 1841, I was called by Mr. Auguste Thionville, my colleague in this city, conformably to the French law to assist him in an acte de notoriete drawn up by him, to establish the rights of the petitioners to a concession of lands situated at the Sault St. Marie, in Canada, (at present in the State of Michigan). I recognize
263 perfectly this act which you present to me as well as my own signature, which is thereto affixed, at the left of that of Mons. A. Thionville. Of the ten witnesses who attested this act seven were perfectly well known to me, to wit: Mons. Faujas de St. Fond, M. Le Comte d'Estrelan, M. Le Baron de Bonneuil, who was my client, M. Ride, M. de Boubers Vojeanlieu Baron de Jonquires, and M. Le Comte de Ponteves d'Amirat; the three others were known to me only by sight; M. Le Chevalier de Bragelougne, M. Benoist, and Mr. Prudeau; all are now dead except M. de Vojeanlieu Baron de Jonquires. I testify that *that* they were highly honorable perons in the colony and of great consideration. I have since learned that the petitioners had intrusted their interests in the United States to M. Favarger, and
264 charged him with claiming in their names the concession in question. I have known M. Favarger since the year 1828; he was my friend, and I am glad of this occasion to render a becoming testimony to the fidelity and honorableness of his character. I close with declaring that I am not interested directly or indirectly in this affair, which I had lost sight of, and which did not recur to my memory until I was asked to present myself before you.

And after reading to him the foregoing the witness has signed it.

(Signed) JOHANNETON.

Sworn and subscribed at Pointe a Pitre, Guadeloupe, this eighteenth day of July, A. D. 1862.

[L. S.] (Signed) H. THIONVILLE, *U. S. V. Consul.*

265 *Answers of Louis Thionville, esq., to the direct interrogatories.*

To the 1st: My name is Louis Thionville; my age is 41 years. I reside at Pointe a Pitre. I am a notary public. I was appointed a notary public the 1st of April, 1852, to act ad interim to my brother, Auguste Thionville, during the journey he then made to Paris. I kept up those functions till the 1st of April, 1853, and since then I have worked in his office as his collaborateur. I am also a member of the municipal council, and the

substitute justice of the peace at Pointe a Pitre. I have ever lived at Guadeloupe, except a journey which I made to France from Oct. 28th, 1844, to 1st of June, 1846.

To the 2nd: I am particularly acquainted with the petitioners, to
266 wit: Louise Pauline, Lizette Antoinette beuve de Pierre M. Bonfilz, Josephine Lucrece, widow of Cyprien Clavie. I saw them come frequently to my father's house, while he was exercising the functions of notary at Pointe a Pierre; I continued to see them with my brother Auguste where the business of the Sault Ste M. brought them.

To the 3rd: I knew equally well Mad'e Marie Anne Toinette M. A. Gantheaume, mother of the petitioners; she was a childhood friend with my mother, who preserved with her very kindly relations up to the 8th of February, 1843, the day when my mother perished in the earthquake and fire which destroyed Pointe a Pitre. She used to come and take her meals with my father and my mother when she came to Pointe a Pitre. I know
267 that this lady died in her own house at Petit Bourg, one of the communes of the colony, on the 29th of May, 1850.

To the 4th: This lady was married three times successively. 1st to Mr. Antoine Camille le G. de Repentigny, a planter residing in the commune of Petit Bourg; 2d, to Mr. Edme j'u Jas. Mignard, health officer, in the same place; 3d, to Mr. Pierre Monpezat, overseer of plantation, residing formerly at Canal, another commune of the colony, and afterwards at Petit Bourg. All are now dead.

To the 5th: I could not be acquainted with Mr. Antoine Camille L. G. de Repentigny, first husband of this lady, because he was dead before I was born; but I have heard much said of him by my father, who was his
268 friend and the intimate comrade of his brother, Louis le G. de Repentigny. My father often repeated to me that he made the acquaintance of this last on the staff of General Ernouf, governor of Guadaloupe, at the beginning of this century, (from 1805 to 1810, if my memory well serves me.) My father was the private secretary of the general, and Mr. Louis le G. de Repentigny, his aid-de-camp; the latter then held the rank of chef de battaillon. It was at this epoch that my father for the first time heard about a concession of six square leagues of land in Canada, made by King Louis the XV, to Louis le G. Chev'r Comte de Repentigny, great-grandfather of the petitioners, and to one Sieur de Bonne. I recollect very well that my father described to me Louis le G. de Repentigny, his comrade on the staff of General Ernouf, as an apathetic man, taking very
269 little care of his own affairs, and appearing disposed to leave the trouble of the affair of the concession to his brother Antoine Camille, younger than he. The latter, from what my father told me, was not more diligent, and it was not until the end of the year 1824, the period of making the inventory, on the decease of Antoine Camille le G. de Repentigny, by my father, who had become a notary, that the claim on the subject of this concession was seriously made My father spoke to me of it as if he had seen the title papers of this concession, and as if he had entire faith in the legality of the rights of the children of Antoine Camille le G. de Repentigny, touching this same concession.

To the 6th: Neither could I have been acquainted with Louis Gaspard le G. de Repentigny, the father of the last named; but I know from
270 accurate sources that I have seen amongst ancient acts (deeds) concerning the property of Changy, at Capesterre, Guadeloupe, and I remember to have heard my father and other persons say who knew him, that he married a Miss Le Provost Duquesnel, who after the death of her husband was married to the Count de Marchias.

To the 7th: I know from the petitioners and from public notoriety that

Louis Gaspard le G. de Repentigny, the husband of M'elle Le Provost du Quesnel, had three children, to wit: Louis le G. de Repentigny, the aid-de-camp of General Ernouf, deceased without posterity and unmarried; Theodore le G. de Repentigny, also deceased without being married and without posterity, and Antoine Camille le G. de Repentigny, father of the petitioners. I know from what the petitioners have told me, that Louis
271 Gaspard le G. de Repentigny, was the only son of Louis le G. Chev'r C'te de Repentigny Chev. de St. Louis, brigadier des armees du roi, ancien gouverneur au Senegal, who was married to a Miss Marie Mageline Chaussegros de Lery, and the original concessee of the Sault Ste Mary. I well remember hearing my father say that it was in recompense of the services of the Count de Repentigny in Canada that the king of France, Louis XV, granted him the Sault Ste Marie. One thing struck me in the recitals which were made to me in this respect, which was that the Count de Repentigny, to defend himself against the Indians or the English, had built in that place a stockade fort, (fort en pieux,) which seemed to indicate that the concession was formerly inhabited, and perhaps cultivated. I cannot tell you where the father and mother of Gaspard de Repentigny were
272 married. I suppose it was in France. I know they left no other child but Gaspard.

To the 8th: I have already said that Antoine Camille le G. de Repentigny died before I was born.

To the 9th: The widow of Antoine Camille le G. de Repentigny was perfectly conversant with this affair; she often spoke of it in my presence to my father. I paid attention to their conversation, because I knew that it related to a very important affair, in which my father and mother took a lively interest on account of their friendly relations to the Repentigny family.

To the 10th. Please refer to number 7. I believe I have already answered the question.

273 To the 11th: I never knew Mad'e Louis Gaspard, Countess de Repentigny, afterwards Countess de Marchais; but I have no doubt that she was the mother of Antoine Camille le G. de Repentigny, and the grandmother of the petitioners.

To the 12th: That lady intermarried with the Count de Marchais, who survived her, and with whom she lived latterly in France, at the Chateau de Courtavenel. Previously she had lived on her plantation called Changy, at Capesterre.

To the 13th: I don't know at what date the Count de Marchais married Mad'e, the widow of Gaspard de Repentigny. Before coming before you I have perused a letter from the Count de Marchais, which I knew was deposited in the archives of the office, dated Courtavenel, the 4th Sep-
274 tember, 1836, and addressed to Mr. Sarragot, brother-in-law of Mad'e Marie Anne Toinette Aimee Gantheaume. It appears from this letter that Mad'e, the Countess de Marchias, died at Courtavenal, the 18th of May, 1836. The Count de Marchais speaks at length to Mr. Sarragot of the affair of the Sault Ste Marie. He urges the Repentigny family to prosecute their claim, and to confide the defence of their interests to a missionary priest of great merit, named Odin, residing at the seminary of Ste Marie, Perry County, Missouri. He also urges Mr. Sarragot to go to that place to aid that missionary in his doing. I know that I have seen in a letter from Mr. Violet Mandatory of the petitioners at Paris, and in another letter from the Count du Fayel, nephew of the Count de Marchais, that the latter died in France at the beginning of this year. In this letter something is said re-
275 specting papers relating to the concession of the Sault Ste Marie,

papers which the Count de Marchais before his death ordered to be sent to the petitioners, and which had been entrusted to Mad'e l'Amirale du Petit Thouars, a creole, of Guadaloupe. Mention was also made of the portrait of Mad'e La Comtesse de Marchais, grandmother of the petitioners, which by the wish of the deceased was to be sent to her grandchildren, the Repentigny ladies being the same petitioners.

To the 14th: I was not witness of any conversation between Mad'e Gaspard de Repentigny, whom I never saw, and Mad'e Camille le G. de Repentigny. I repeat that I was particularly acquainted with this lady; that I have had, and that I continue to have with her three daughters fre-
276 quent relations; that I have often conversed with them about the Sault Ste Marie business, and that I considered the three petitioners the sole direct descendants of the Chev'r C'te de Repentigny. This leaves no doubt in my mind, not only on account of my personal impression, based upon the intimate acquaintance I have had with with the Sault Ste Marie business enabling me to form an exact opinion; but on account of the testimony of my father, in whose words I have the most entire confidence, and who has left among his fellow citizens at the close of a long and honorable life a reputation for honor and fidelity, which was the most precious inheritance of his children.

And after reading the foregoing to him, the witness has signed the same.

(Signed) L'S THIONVILLE.

Sworn and subscribed before me at Point a Petre, Guadeloupe, this 17th day of July, 1862.

(Signed) H. THIONVILLE, *U. S. V. Consul.* [L. S.]

279 *Answers of the said witness to the cross-interrogatories.*

To the 1st: I understand very well the nature and object of the claim in question. I am connected with the petitioners, whose mother was the friend of my mother, and the client of my father. I am not in any pecuniary sense whatever interested in the success of the petitioners. I desire their success on account of my good will to them, and because I am convinced of the legality of their claim.

To the 5th: I have already answered that I did not know Antoine Camille le G. de Repentigny, father of the petitioners. I repeat that I have heard my father say much about him. In respect to the information which you ask touching his family, particularly his brothers and sisters, I must
280 tell you that there exists among the minutes of the office, under date of 11th of May, 1846, the acte de depot of a document quite interesting on this subject. It is a notoriety or inquest (enquete,) drawn up by my brother, Auguste Thionville, a notary public, in presence of M. Johanneton his colleague, upon the certified declaration of ten persons having a perfect and intimate knowledge of the Repentigny family. I worked in the office of my brother, in quality of first clerk at that time, and I well remember that that act was written under the dictation of my brother by a person named Baroche, one of the clerks of the office, since deceased. All the signers of that act were more or less particularly known to me. They were for the most part of advanced age, and are now all dead with the
281 exception of M. Le Baron de Boubers Vojeanlieu. They were men of the greatest probity. Several of them had occupied high positions in the colony, I therefore hold for the most entire and scrupulous truth all those witnesses have certified in that act.

To the 6th: I never understood that Louis Gaspard le G. de Repentigny left at his death either brother or sister. Moreover, according to ancient and modern French laws collaterals could have no right to his estate since

he left three children. Nor did I ever hear anything said about a testament which should alter the rights of his children. Nobody in the colony puts forth any pretensions on the subject of the Sault Ste Marie affair except the petitioners.

To the 7th: I remember having read a document written upon parch-
282 ment, and bearing, if I am not mistaken, the signature of King Louis XV, or of one of his ministers. The document testified to the services rendered to the king of France by Mons. De Repentigny. I vaguely recall a fact which was very honorable (tres honorable) to him. He refused, I believe, to take service in the English army to preserve his quality as a Frenchman.

To the 14th: Yes; I always heard it said that the petitioners, to wit: Mad'e Lizette Antoinette le G. de Repentigny, widow of M. Pierre Charles Lucien Murville Bonfils; Mad'e Josephine Lucrece le G. de Repentigny, widow of M. Cyprien Clavie; and Mad'elle Louise Pauline le G. de Repentigny, were the only descendants in direct line from M. Louis le G. Chev'r C'te de Repentigny; and that they alone under this title, as well as their mother, at present deceased, had the right to the concession
283 of the Sault Ste Marie, in Canada. Finally, I know no other thing connected with this affair, except that the petitioners are represented at the United States government by Mr. Alexis Frederic Favarger, formerly a merchant at Pointe a Pitre, with whom I am acquainted under the best relations, and whom the petitioners have selected on account of the probity of his character and his knowledge of the English tongue, which permits him to follow up this important matter.

And after reading the foregoing to him the witness signed.

(Signed) L. THIONVILLE.

Sworn and subscribed before me at Pointe a Pitre, Guadeloupe, this 16th day of July, A. D. 1862.

(Signed) H. THIONVILLE, *U. S. V. Consul.* [L. S.]

284 *Answers of Auguste Thionville, esq., to the direct interrogatories.*

To the 1st: My name is Auguste Thionville, I am fifty-six years old. I reside at Pointe a Pitre, Guadeloupe. I am a notary public. Independently of my functions of notary public, I am president of the general council of Guadeloupe, mayor of Pointe a Pitre, censor of the Bank of Guadeloupe, and chevalier of the legion of honor. I came back from Paris where I had been *been* to pursue my studies [ou j'avais ete faire mes etudes,] the 9th of June, 1830. I remained at Pointe a Pitre until the 30th of April, 1852, inclusively. I made a voyage to Paris the 30th of April, 1852. I returned from this voyage in Nov'r the same year. Since then I have not left Pointe a Pitre.

285 To the 2nd: I am particularly acquainted with the petitioners, to wit: 1st, Louise Pauline le G. de Repentigny; 2d, Lizette Ant'ette le G. de Repentigny, at present the widow of P. M. Banfilz, and 3d, and 3d, Josephine Lucrece le G. de Repentigny, widow of Mons. Cyprien Clavie. I have known them since my return to Pointe a Pitre, in June, 1830, and that they often came with their mother to my father's, at Pointe a Pitre, on the subject of their business, and especially that of the Sault Ste Marie, and that I myself, since I succeeded to my father, have been at their mother's, at Petit Bourg, Guadeloupe, transacting their business. In fine I have never ceased to entertain with them very regular business relations relative to the claim to the Sault Ste Marie, to see them frequently, and to write them numerous letters.

286 To the 3d : I was well acquainted with the mother of the petitioners; her name was Marie Anne Toinette N. A. Gantheaume, widow of M. Antoine Camille le G. de Repentigny, afterwards the wife in second nuptials of M. Edm'e Jn. Jos Mignard, and again in 3d nuptials to M. Pierre Monpezat. As I have said, I knew her from my return into the colony, in June, 1830. She lived at Petit Bourg Gaudeloupe. She often came on her business to Pointe a Pitre, to my father, where I lived, and where I had occasion to see her. I did not cease to hold with her very regular business relations up to the time of her death, especially in what concerned her claim relative to the Sault Ste Marie. She died on her plantation, at Petit Bourg, on the 29th of May, 1850.

287 To the 4th : Mad'e the widow le Gardeur de Repentigny was twice married; 1st, to Edm'e Jean Joseph Mignard, health officer at Petit Bourg. Their marriage contract was drawn up in this place by my father, in his quality of notary, the 14th of December, 1824. The minute of this contract is in my possession as my father's successors. 2d, with M. Pierre Monpezat, overseer of plantation at the canal Guadeloupe, upon the Guet plantation. The marriage contract was passed by me in my quality as a notary, in my office at Pointe a Pitre, the 11th day of February, 1839. Mr. Monpezat left Canal and resided with his wife at Petit Bourg.

288 To the 5th : I did not know personally Antoine Camille le G. de Repentigny, first husband of Mad'e Marie Ant'ette N. A. Gantheaume, but I have seen in the inventory of M. Antoine Camille le G. de Repentigny, made by my father, on the 5th Oct., 1824, and of which I am in possession as the successor of my father, that he was a coffee planter in the commune of Petit Bourg, and that he died on the 1st of April, 1820, on his plantation, called Sene.

289 To the 6th : I never knew personally Louis Gaspard le G. C'te de Repentigny, father of the preceding, but I am certain to have noticed in his family papers, of which I was for a long time in possession as a notary of Mad'e Monpezat, his daughter-in-law, that he was married at Capesterre Gaudeloupe to Mad'elle Magdeline Pauline le Provost du Quesnel, who at her death was Countess de Marchais. I am certain from the same family papers which I have read, perused, and studied with the greatest care, that there were born of this marriage three male children, to wit : 1st. Louis le G. de Repentigny, chef de bataillon, aid-de-camp of Lieutenant General Ernouf, governor of Guadeloupe, and who died in 1821, in this colony, without posterity, and intestate. My father, who was private secretary to General Ernouf, was intimately acquainted with M. de Repentigny, his aid-de-camp. They were together daily in the service. He often spoke to me particularly concerning the rights of the Repentigny family to the Sault Ste Marie, a matter which, since 1830, the time of my return to Guadeloupe, I have not lost sight of. 2d, Theodore le G. de Repentigny, without profession, living at Capesterre, Guadeloupe, upon the Changy estate, who died intestate and without posterity, at Basseterre, Guade-

290 loupe, July 1st, 1811. My father also knew him well and often spoke of him to me on account of the importance of the Sault Ste Marie affair. 3d. lastly, M. Antoine Camille le G. de Repentigny, of whom I have spoken on No. 5.

To the 7th : I can speak of more than simple conversations on the subject of the genealogy of the Repentigny family. I will give an account of the attentive examination, and of the careful study of the titles of this family, establishing this genealogy, titles, (*titres,*) which were found among the papers of Antoine Camille le G. de Repentigny, and which passed from the hands of my father to my own as a notary of the family, and depository of the most valuable papers. According to these titles, bearing the

291 seals of public functionaries who delivered them, and requiring full

belief of their authenticity in French law, M. Louis Gaspard C'te de Repentigny was the son of Louis le G. Chev. C'te de Repentigny, chevalier of St. Louis, brigadier of the armies of the king, ancient governor general and commandant-in-chief at Senegal, coast of Africa, and the lady Marie Magdeleine Chaussegros de Lery. He was born at Quebec on the 10th of July, 1753. He was an only son. It was to his father that the concession of six leagues square of land at the Sault Ste Marie, was made by King Louis the XV. This concession was made in 1750, conjointly to him and to M. De Bonne, captain in the regiment of Conde.

292 I have often had long conversations with my father on this subject, and in these conversations he related to me all he had heard said by the children of Louis Gaspard C'te de Repentigny, touching the genealogy and their rights to the concession, and these recitals were in everything conformable to the titles of which I have spoken.

I cannot exactly say what was the rank of Louis le G de Repentigny, in the French army of Canada, but I have understood and am assured by the papers which I have had under my eyes, that he there rendered great services, and that it was in recompense of services that he received from King Louis the XV, conjointly with M. De Bonne, the concession of the Sault Ste Marie between Lake Superior and Lake Huron.

293 After the unhappy issue of the war between France and England and the conquest of Canada by the English, M. Louis le G. Cte de Repentigny went back to France, and from thence was sent into Africa, to Senegal, as governor general and commandant-in-chief. I do not know where he died, but what I know of certain knowledge is that he had but one son, Louis Gaspard le G. de Repentigny, the grandfather of the petitioners.

To the 8th : I can answer nothing to this interrogatory, not having personally known Camille.

To the 9th : Mad'e Marie Antoinette N. A. Gantheaume, widow of Camille le G. de Repentigny, well knew all the facts I have set forth in No. 7.

294 She often talked with me about them for the purpose of arriving at a result in the reclamation which she was prosecuting against the United States of America on the subject of the Sault Ste Marie. What I should say here would be only a repetition of what I have already said in No. 7.

To the 10th: I repeat that of the marriage of Louis Gaspard le G. de Repentigny, with Magdeleine Pauline Marguerite le Provost du Quesnel were born three children, to wit : 1st. Louis le G. de Repentigny, never married, deceased in 1821, at Capesterre, Guadeloupe; 2d. Theodore le G. de Repentigny, unmarried, deceased on the 1st of July 1811, at Changy, Capesterre, Guadeloupe; 3d, lastly, Antoine Camille le G. de Repentigny, husband of Mad'e Marie Anne Toinette N. A. Gantheaume, who died April 1st, 1820, at Petit Bourg.

295 To the 11th. I never knew Mad'e le Prevost du Quesnel, widow of Louis Gaspard C'te de Repentigny, but I have often heard the subject spoken of by my father, by Mad'e Monpezat, her daughter-in-law. I have seen her correspondence with her family among the papers of Mad'e Monpezat.

To the 12th : She was married to M. Le C'te de Marchais, with whom she lived in France, at the Chateau de Courtavenel, Canton de Rozoy, arrondissement de Coulommiers (Seine and Marne.)

To the 13th : I know from a letter from the Count de Marchais, dated at Courtovenel, the 4th of September, 1836, addressed to M. Sarrot, the brother-in-law of Madame Monpezat, a letter which, on account of its importance, was deposited with me on the 20th of March, 1841, that Mad-

296 ame the Countess de Marchais died at Courtavenel, May 18, 1836. In

this letter, of which I present the original, the Count de Marchais, after announcing the death of his wife, enters into long details respecting the business of this lady, particularly the Canada lands; he mentions that the Countess de Marchais was owner of a portion of these lands as heir of one quarter to her two sons, Louis and Theodore de Repentigny. He declares that although he is a creditor of his wife, Mad'e la Comtesse de Marchais in a sum of more than 80 thousand francs, he was very far from thinking of sharing in the advantages which her granddaughters, the present petitioners, might derive from these Canada lands. He speaks of a missionary priest called Odin, a man of distinguished merit, who might usefully employ him-
297 self in giving success to the rights of the Repentigny family in the Canada lands, rights which are of great (*majeure*) importance. He speaks also of the steps which he, the count, had taken with the Duc de Broglie, then minister of foreign affairs of France, to obtain the title papers of the concession made to Repentigny and De Bonne of the lands at the Sault Ste Marie, and to have information touching the importance of this concession. This title deed was delivered to him April 3d, 1834, by the *maitre des requetes*, director of the colonies.

In fine, the Count de Marchais recommends that nothing shall be neglected to turn this concession to account. The Count de Marchais died in France at the beginning of this year. I know not whether at Paris or at Courtavenel, or elsewhere; but I was informed of his death by two persons
298 worthy of confidence—1st. M. E. Violet, residing at Paris, rue Lamartine, No. 9, who announced this death to the Repentigny ladies, the present petitioners, under date 14th March last. His letter was communicated to me by those ladies to be answered. 2d. Count du Fayel, nephew of the Count de Marchais, residing at La Flecheus, canton de Guer, arrondissement de Ploermel, (Morbihan,) who also announced this death to the Repentigny ladies, under date April 12th last. This letter was also communicated to me by those ladies, to be answered. He says in this letter that he has sent to M. E. Violet, of whom I have spoken, a correspondent at Paris of M. Favarger, agent of the Repentigny ladies at Detroit, papers rel-
299 ative to the concession made in Canada to the Count de Repentigny, great-grandfather of the ladies who are petitioners, papers whereof M. de Marchais was the depository, and which the latter on his death-bed recommended should be sent to them. He also speaks of a portrait of Mad'e le Provost Duquesnel Countess de Marchais, grandmother of the petitioners, and of the family papers deposited in the hands of Mad'e l'Amirale du Petit Thomas, at Paris, according to the order of the Count de Marchais, to be sent to them.

To the 14th: I was not present at any conversation between the widow of Gaspard le G. de Repentigny and Mad'e Camille le G. de Repentigny, but, as I have already said, I often saw the widow of Camille le G. de Repentigny when she had afterwards become the widow of Mignard, and after
300 that the wife of Monpezat, speaking with her three girls, the issue of her first marriage, and these three girls were always considered by her as the sole direct descendants of the Chev'r C'te de Repentigny. This was never doubted, either by me or by any of those who knew this family.

Answer to additional interrogatory.

To the 15th: In March, 1841, I exercised the functions of notary public at Pointe a Pitre, island of Guadeloupe; I was appointed notary public October 9th, 1834, in place of my father. I took the oath in that quality before the royal court of Basseterre, Guadeloupe, some days after,
301 and my first official act was on 26th of the same month. I soon occupied myself in this quality of notary public with the affairs of the

Repentigny family. 1st. December 2d, 1834, I made the liquidation of the rights of Mad'e Mignard against her husband, a liquidation called for by the separation of body and goods pronounced by the tribunal of Pointe a Pitre against Mr. Mignard. 2d. February 19th, 1835, I made the inventory of the plantation of "Sene," situated at Petit Bourg, belonging to the Repentigny ladies and to Mad'e Mignard, their mother, a plantation which the tribunal had ordered Mignard to quit. 3d. May 26th, 1835, I made Mons'r Mignard's inventory, one in which the Repentigny ladies and Mad'e Mignard, their mother, had great interests in contest; this operation lasted more
302 than a month. 4th. May 25th, 1838, I made the liquidation of the rights of Mad'e Mignard and of her children of the first and of the second bed. 5th. February 11th, 1839, I made the marriage contract of the widow Mignard with Mr. Pierre Monpezat. 6th. July 29th, 1840, I drew up a power of attorney given by Mr. and Mad'e Monpezat and the Repentigny ladies to Mr. E. Violet, for the affair of the Sault St. Marie. 7th. March 13th, 1841, I drew up an "acte de notoriete," setting forth that the Repentigny ladies, the present petitioners, and Mad'e Monpezat, their mother, were the only persons who had the right to the concession of the Canada lands called the Sault Ste Marie, made originally to Mons'r Louis le G. Chev'r C'te de Repentigny. 8th. March 20th, 1841, I received in deposit the letter of the
303 Count de Marchais, above mentioned in No. 13, and drew up an acte of this deposit in view of the importance of this letter. 9th. April 8th and 12th, 1841, I drew up a power of attorney by the Repentigny ladies, the present petitioners, and by Mad'e Monpezat, their mother, to receive the estate of Mad'e La Countesse de Marchais, formerly widow of Louis Gaspard C'te de Repentigny, who died, as I have above stated, at Courtavenel, the 18th of May, 1836. 10th, Lastly, October 12th, 1849, I drew up a last power of attorney respecting the Canada affairs given to Mr. Alexis Frederic Favarger, then a merchant residing at Pointe a Pitre. I might cite many other acts foreign to this affair of the Sault Ste Marie, which I have done for the Repentigny family, and which have furnished me with an occasion to see
304 Mad'e Monpezat and her children, the Misses de Repentigny in question. It is my signature, A. Thionville, which is affixed to this document. I recognise it as having been written by my own hand. I recognise also that the other signatures affixed to it are those of the persons therein mentioned. I was acquainted with all those persons in one way or another. For instance, Mr. Falujas de St. Fond was my godfather; Mr. Ride was one of the witnesses of my marriage. The Chevalier de Bragelougne was my father's client, and afterwards my own. I had with them frequent business relations. I was equally well acquainted with Mr. Barbotteau, Prudeau, Vernon de Bonnevil d'Estrelan, L. Benoist, Le Comte de Ponteves
305 d'Amirat, all the ten witnesses who signed the acte de notoriete of the 13th March, 1841. All these persons who had then arrived at a great age are to-day deceased, except the Baron de Boubers Vojeanlieu. I am acquainted with the handwriting of each of them, and I saw each one of them place his signature to the acte de notoriete in question. This acte de notoriete is a notarial act drawn up by me and signed according to the French law in force in France and in Guadeloupe, by me and by Mr. Johanneton, notary public at Pointe a Pitre, at the date indicated, March 13th, 1841. These words "treize Mars," are from my hand, and the rest of the writing is of one of my clerks, named Baroche, at present deceased. This act was drawn up at its date, March 13th, 1841, in my presence, and written
306 under my dictation by Mr. Baroche, one of the clerks of my office, from declarations made to me by the persons above designated, declarations conformable in all points to the titles and papers of the Repentigny family. It was read over to the declarants in conformity to the French law,

as is elsewhere said in the document itself. The Repentigny ladies and their mother were not present either at the drawing up or the signing of this act of notoriety, the French law not requiring it, but they have had it in their hands a long time ; they have ample knowledge of it, and they have delivered a copy of it to Mr. Favarger to aid him in establishing their rights.

The Repentigny ladies and their mother attached so great an impor-
307 tance to this act, which established in an exact and certain manner their rights as the sole direct heirs of Louis le G. Chev'r C'te de Repentigny, original concessee of the Sault Ste Marie, that they had it drawn up in triplicate to the end that if any one of them should be lost, they might recur to the other two. By the advice of Mr. Favarger, one of the originals of the same act of notoriety in all respects similar to the one mentioned above, bearing the same signatures, the same date of 13th March, 1841, is in my possession in virtue of the deposit which Mr. Favarger made with me on the 11th of May, 1846. I show you this original. I am acquainted with Mr. Alexis Frederic Favarger, at first vaguely during the period from 1830 to the 8th of February, 1843. After that I knew him intimately ;
308 after the earthquake of that day he was employed with Mr. Edmond de Baecque, a merchant of this city, my friend and my client, whom I often visited and with whom I met Mr. Favarger. He is a man of high honor, enjoying here the general esteem, which led the Repentigny ladies to select him at last to defend their rights before the authorities of the American Union. It was at the date of the power of attorney of the 12th October, 1849, that the document of the 13th of March, 1841, setting forth the genealogy of the Repentigny ladies and their rights to the concession of the Sault Ste Marie, was handed by the said ladies to Mr. Favarger solely to uphold their rights. But before that time Mr. Favarger had exerted
309 himself actively in preparing and collecting together all the documents relating to this affair. The red wax seal affixed to the document in question is that of the tribunal of first instance at Pointe a Pitre. I recognise it as true and authentic as well as the signature of Mr. Des Islets Mondesir, the royal judge. The second seal is that of the procureur general, chief of justice of Guadeloupe. I recognise it also as true and authentic, as also the signature of Louis Ristelhueber, first substitute of the procureur general, then in his term for the service. The third seal is that of the governor of Guadeloupe. It is also true and authentic as well as the signature of Mr. Jubelin, commissaire general de la marine de premiere classe, governor of Guadeloupe up to the 15th of June, 1841, when he was replaced by the Contre Admiral Gourbeyre. The government of
310 Guadeloupe, like that of Martinique and of La Reunion, (formerly Bourbon,) was composed at that time, 1st, of a governor who represented the chief of the state, and who had the supreme direction of all branches of the service. 2d, of a military commandant of the armed force. 3d, of a director of the interior for the internal affairs of the country. 4th, of an ordornateur for what related to the marine and the fleet. 5th, finally, of a procureur general for the administration of justice. These divers functionaries, called chefs d'administration, are placed under the authority of the governor. Some modification of this regime took place, thus the military commandant was suppressed but the other chefs d'administration were
311 preserved. The mode employed upon the document in question is the legal and usual mode of legalizing the acts destined to be used out of the colony. By legalizing we understand certifying a document and rendering it authentic. The organic ordinance for the islands of Martinique and Guadeloupe, bearing date the 9th of February, 1827, (chap IV, art 53, § 1st, runs : "The governor legalizes the acts to be sent out of the colony; he legalizes also the acts coming from a foreign country." I did not per-

sonally know either Gaspard or his son, Camille de Repentigny, nor Mad'e Gaspard, as I have already said. I have not therefore been able to see their family titles and papers in their possession; but these family titles and papers were handed to my father by the widow of Camille in October, 1824,
312 when Camille's inventory was made. Afterwards when the important act of 13 March, 1841, was drawn up, these same titles and papers enclosed in a trunk were deposited in my office by the widow of Camille, then Madame Monpezat. I have had before me for this purpose all the acts cited in this document bearing the seals of the authorities which delivered them. I certified this fact as being the truth. I add finally that the testimony embodied in this document by the ten persons who signed it was given to me by them only after verification made by themselves of the papers on which that testimony was based, and which was entirely accordant with their recollections and their traditions.

And after reading the foregoing the witness signed.

(Signed) A. THIONVILLE.

313 Sworn and subscribed before me at Pointe a Pitre, Guadeloupe, the fifteenth day of July, A. D. 1862.

[L. S] (Signed) H. THIONVILLE, *U. S. V. Consul.*

Answers of said witness to the cross-interrogatories.

To the 1st. I am perfectly well acquainted with the nature and object of the litigation now in prosecution. I know that it is a considerable interest. I am connected with the petitioners by constant business relations, which I have had and which I still have with them. I am not interested in the success of the petitioners. I feel that which one ordinarily feels for his clients when he has never had any but good relations with them. I expect no gain from this suit. I desire that they may gain it because I am fully con-
314 vinced that they have right on their side.

To the 5th: Antoine Camille le G. de Repentigny died at Petit Bourg, April 20th, 1820. His death is regulary certified by an act written upon the register of the etat civil of Petit Bourg, an act which I have seen. He had one brother, Louis le G. de Repentigny, who died the following year; his other brother Theodore le G. de Repentigny, died in July, 1811. He had no sisters and no other brothers; he made no will. His brother, Louis le G. de Repentigny, who survived him some time, did not inherit from him, because he left children, and because children by the French law excludes all other relations. His children were, 1st, Theodore Rene le G. de Repentigny, who died at the age of 4 years at Petit Bourg; 2d, Lizette Antoinette le
315 G. de Repentigny, now the widow of Pierre Charles Lucien Murville Bonfilz; 3d, Josephine Lucrece le G. de Repentigny, at present the widow of Cyprien Clavie; 4th, lastly, Louise Pauline le G. de Repentigny, all three being the present petitioners. The succession of his child, Theodore Rene, fell, according to the French law, one quarter to his mother, and as to the three other quarters to his sisters german, (sœurs germaines,) the said petitioners. All these facts are of public notoriety at Guadeloupe, in the commune of Petit Bourg, resulting not only from tradition and the recollections of all those who knew the Repentigny family, but from the titles and papers of that family which I have, as I before remarked, looked over and examined as a notary public with the greatest care.

316 To the 6th: Louis Gaspard Count de Repentigny, born at Quebec, September 10th, 1753, had neither brother nor sister. The acte de notoriete of 13th of March, 1841, formally establishes this by the declaration of the said witnesses of the highest honesty, intimately acquainted with

the Repentigny family, and who were unanimous on this point. The titles and papers of this family equally attest that he was an only son, that he made no testament, nor transfer of his property of any kimd whatever. Morever, no person here has ever raised any such pretensions, whether as brother or as sister of said Gaspard C'te de Repentigny, or as holder of such testament or transfer of his property. This is also of public notoriety.

317 To the 7th: I always heard it said by persons acquainted with the Repentigny family, and particularly by those who are named in the document of the 13th of March, 1841, that Louis le G. Chev'r C'te de Repentigny had rendered great services to France in the war which it sustained in Canada against England. That to recompense these services a concession was made to him by King Louis XV, of six square leagues at the Sault Ste Marie conjointly with Mr. De Bonne. I have seen amongst the papers of the Repentigny family the title or at least the copy of the title. I do not remember whether it was the original title itself or a copy of the title of the said concession, bearing the signature of King Louis XV on parchment. I have seen, besides, among those papers flattering testimonials towards the said Louis le G. Chev'r Comte de Repentigny emanating either directly from his majesty King Louis XV or his ministers. I cannot say precisely whether it was the king or his ministers, but these felicitations really existed

318 among the family papers which I have seen. I know, moreover, that the said Louis le G. Chev'r C'te de Repentigny was governor general and commander-in-chief at Senegal, coast of Africa. This also results from the ancient family titles and papers which I have had under my eyes, but I do not remember exactly at what epoch. I affirm that the said Comte Louis de Repentigny made no testament nor disposition of his property of any kind whatever. For the rest nobody has ever shown himself the bearer of any will or any other act transferring his property; hence, according to tradition and the family titles, his sole heir to all he had was his only son, Louis Gaspard de Repentigny, capitain de vaisseau, chevalier de St. Louis, grandfather of the present petitioners. I affirm all these

319 facts as being of the utmost exactness and demonstrated by the evidence, whether by common rumour or by numerous, accurate, and consistent (precis et concordants) title papers; title papers which, I cannot too often repeat, have been read, verified, and examined by me as a notary public with the most religious scrupulousness.

To the 14th: I have always heard it said that the petitioners mentioned in the 14th interrogatory were not only direct descendants of Louis le G. Chev'r C'te de Repentigny, but the sole and only descendants in the right line. Nobody but them, whether legitimate or illegitimate, has come forward at any period to claim this direct descent. I affirm that I have never seen or heard any such person spoken of, and I persist in saying that the present

320 petitioners are the only ones who have a right to the concession of the Sault Ste Marie.

Lastly: I know no other particular thing nor any other circumstance which attaches itself to this affair.

And after reading to him the foregoing, the witness signed the same.

(Signed) A. THIONVILLE.

Sworn and subscribed before me at Pointe a Pitre, Guadeloupe, this fifteenth day of July, A. D. 1862.

[L. S.] (Signed) H. THIONVILLE, *U. S. V. Consul.*

321 *Memorandum.*—A translation of the Exhibit VIII*a*, being the act of notoriety of 1841, referred to in the additional direct interrogatory to Auguste Thionville, will be found among the exhibits attached to the Detroit depositions (No. 1) of A. F. Favarger, and marked there also VIII*a*.

325 District court of the United States for the district of Michigan.

Stipulations as to printed and general documentary evidence filed 19th and 21st November, 1862.

LOUISE PAULINE DE REPENTIGNY and others, petitioners,
vs.
THE UNITED STATES OF AMERICA, respondents.

It is stipulated in this case that on the final hearing thereof either party may produce and read in evidence any book of history, journal, travels, annals, chronicles, statutes, or other printed book of credit among historians or men of learning; and also any document anthenticated under a provincial or departmental seal of Canada or France, and all documents printed by Congress or laid before Congress relating to the matters in controversy; any treaty or copy of treaty or capitulation between the government of France and Great Britain, France and the United States, and the United States and Great Britain, relating to the same matters; that the books or passages therefrom and the documents written in a foreign language, relied upon by the party producing the same, shall be accurately translated into English for the use of the court; that either party may, upon the hearing, make proof of the authenticity of any such documentary evidences or translations; that the court may give to them, or any of them, such weight as it may think the same entitled to in this case, in law or equity, and that in case of an appeal only such parts and portions of said documentary proofs shall be required to be returned as are material to the issue.

326 A list of all such books and documents, with references to the passages relied upon, to be furnished to the opposite party at least thirty days before the final hearing.

Detroit, November 19th, 1862.

(Signed) J. M. HOWARD, *Sol. for Pet'rs.*
(Signed) ALFRED RUSSELL, *U. S. Dist. Atto.*

It is stipulated that after the words "the United States and Great Britain," in the foregoing stipulation, there shall be inserted, as a part of the same, the words "and all records and proceedings of any board of commissioners for the examination and settlement of private land claims in the Territory or State of Michigan established by any act of Congress."

Nov. 21, 1862.

(Signed) ALFRED RUSSELL, *U. S. Dist. Atto.*
(Signed) J. M. HOWARD, *Sol. for Pet'rs.*

327 *Memorandum.*—The two following notices of 4th April and 19th May, 1863, were served under this stipulation:

List of histories, documents, &c., which will be referred to by the counsel for the petitioners on the final hearing under the stipulation on that subject entered into by the parties and bearing date the 19th and 21st days of November, 1862.

A.—Les Relations des Jesuites, Quebec edition of 1858, particularly vol. 3d, 1667, p. 7; 1669 p. 17, &c.; 1672, p. 27, &c.

B.—Charlevoix's Travels, particularly vol. 5, Paris ed. of 1744, p. 415, &c., and the map belonging to it.

C.—Colonial History of New York, p. 803, 304.

D.—John Carver's Travels, London ed. of 1781 and the map belonging to it, p. 144, &c.

E.—William Smith's History of Canada from its discovery to the peace of 1763, p. 200, &c.; p. 221, &c.; p. 216, &c.; p. 262, &c., and appendix.

F.—Wm. H. Smith's History of Canada, (a different history from the one last mentioned.)

G.—Alexander Henry's Travels and Adventures, N. Y. ed. of 1809, passim.

H.—Bancroft's History of the U. S., particularly vol. 3, p. 131, &c.; p. 150, &c.; and vol. 4 passim, and particularly chap. 16 and the maps belonging to said volumes.

I.—Schoolcraft's Journal of Travels in 1820 and 1821, p. 132, &c.

328 K.—No. 42 of the Report of the Committee on Public Lands of the House of Representatives, 1st sess. 20th Cong., containing the report of commissioners for the examination of private claims to land in the Territory of Michigan, particularly part 7, p. 451, 463, &c., and Commissioner Graham's letter, p. 4.

L.—Report of the Select Committee of the House of Rep. (No. 296) 3d sess. 27 Cong., on the subject of the public lands, commonly known as Wm. Cort Johnson's Report.

M.—Senate Document No. 458, 1st sess. 26th Cong., being a memorial, &c., of citizens of Wisconsin and an argument of Hon. James D. Doty.

N.—Diplomatic Correspondence, particularly vol. 3, p. 268–271.

O.—Report (not printed) of the Board of Commiss'rs created by the act of Congress of 1850 (9 U. S. Stat. at Large, p. 469) for the examination of private land claims at the Sault Ste Marie, passim.

P.—Constitution of Virginia, adopted June 29th, 1776.

Q*a*.—And the charter of King James I, therein referred to.

Q*b*.—Resolution of Congress of April 22d, 1778, to be found in vol. 2 of the Journal of Congress.

R.—Journal of Congress, vol. 2, under date M'ch 19, 1779.

S.—Instructions of the Assembly of Maryland to their delegates in Congress of 1778 or 1779, found in Henning's Stat. at Large, vol. 10, p. 555.

T.—Remonstrance of the Assembly of Virginia to the Congress of

329 14th Dec., 1779, found in same volume, p. 557.

U.—Act of the Assembly of Virginia of Oct., 1778, establishing the county of Illinois, found in Henning, vol. 9.

V.—Resolutions of Congress of March 19th, 1779, relative to the boundaries of the thirteen States, found in the Secret Journal of Congress, vol. 2.

W.—Entick's Late War, particularly vol. 4, and the capitulation entered into September 8th, 1760, at Montreal, found p. 465, &c., and also vol. 5, p. 440, &c.

X.—The preliminary treaty of peace of Nov. 3, 1762, entered into at Fontainbleau, between the kings of England, France, Spain, and Portugal, found in Jenkinson's Collection of Treaties, vol. 3, London ed. of 1785, in translation, and the treaty in the French language found in Martin's Recueil, vol. 1, and in vol. 5 of Entick's Late War, p. 438, &c.

Y.—The definitive treaty of peace and friendship of Paris of 10th Feb'y, 1763, between Great Britain, France, and Spain, by which Canada was confirmed to Great Britain, found in translation in Jenkinson's Collection, and in the original French in Marten's Recueil de Traites, and also in vol. 5 of Entick's Late War, p. 450, &c.

Z.—Records of the proceedings of commissioners to examine private land claims at Detroit under sundry acts of Congress, viz:

330 Claim of Felix Peltier and all the papers therewith connected, found in MS. vol. 3, p. 204 and MS. vol. 4, pp. 78 to 94.

Claim of Nicholas Gonin, found vol. 3, p. 532, 434, 435, and American State Papers, vol. 16, p. 270.

Claim of the heirs of Antoine Morass, found vol. 4, pp. 104 to 115.

Claim of George Meldrum, found vol. 2, p. 236, p. 255; vol. 4, pp. 115, 116, 117, and 118.

AA.—An act directing descents, passed by the legislature of Virginia in 1785, found in Henning's Statutes at Large, vol. 12, p. 138.

AB.—An act for the distribution of intestate estates, passed by the legislature of the colony of Virginia in 4th Anne, 1705, being chapter 33, same Statutes at Large.

AC.—Message of King Geo. III to the British Parliament, of Feb'y 25, 1791, relative to the division of the province of Quebec, found in the Journal of the House of Commons, vol. 46, p. 227.

AD.—The act of the British Parliament of 1774, 14 Geo. 3, c. 83, commonly known as the Quebec Act, found vol. 30 of the British Statutes at Large, from Magna Charta to the end of the Thirteenth Parliament of Great Britain, p. 549.

AE.—Act of the British Parliament of 1791, (being 31 Geo. III, c. 31,) to repeal certain parts of acts passed in the 14th year of his majesty's reign, intituled "An act for making more effectual provision for the govern-
331 ment of the province of Quebec, in North America, and to make further provision for the government of said province," commonly known as the "imperial act," particularly the preamble, the 1st, 2d, 3d, 33d, 43d, 44th, 45th, and 48th sections of said act, said act being found in said British Statutes at Large, vol.

AF—The deed of cession by Virginia of Jan. 2d, 1781, of her interest in the lands northwest of the Ohio, (to be found in W. C. Johnson's Report.)

AG.—Documents relative to the colonial history of New York, vol. 10, p. 262; letter from Governor Duquesne to Machault, the colonial minister, dated Quebec, 13th Oct., 1754, and note on same page.

List of documents referred to in said stipulation as authenticated under a provincial or departmental seal.

1. Copy of the original concession to De Bonne and De Repentigny, authenticated under the provincial seal of Canada.

2. Copy of the brevet of ratification under the proper seals of France, being Exhibit 44 attached to the deposition of A. F. Favarger; and also one under provincial seal of Canada and another under French seal, be-
332 ing Paris Doc. No. 14.

3. The original brevet of ratification written on parchment, and signed by King Louis 15th and his minister, Rouille, and recorded at Quebec.

3*a*. Paris Document 94, duly authenticated, being a letter of instructions from the minister to the Marquis Duquesne, dated Versailles, June 16, 1752, respecting the motives of the establishment at the Sault Ste Marie.

4. Act of faith and homage, dated February 13, 1781, under the provincial seal of Canada.

5. Paris Document No. 46, (from the Dossier,) relating to the Chev. de Repentigny, showing him to have been a lieutenant in 1751.

6. Paris Document No. 15, (from the Dossier,) letter from Governor La Jonquiere to the minister, dated Quebec Oct. 5, 1751, stating that De Repentigny was at the Sault Ste Marie and making settlements there, and that he arrived there in 1750.

7. Exhibits 44 and 45, presented by Favarger, and attached to his deposition.

8. Exhibit No. 38, presented by Mr. Favarger on his examination, being an autograph letter from Governor the Marquis Duquesne to the Chev. de Repentigny, then at the Sault Ste Marie, dated April 24, 1754, giving him certain instructions.

9. Letter from Governor Duquesne to the minister, dated Oct. 13,

333 1754, on the subject of De Repentigny's improvements at the Sault Ste Marie, under the provincial seal of Canada.

10. Procuration (power of att'y) from De Repentigny to his aunt Marie Catherine le Gardeur de Repentigny, dated Aug. 9, 1749, under the seal of the province of Canada.

11. Paris Document No. 21, being a memoir signed by the Chev'r de Repentigny, under the seal of the department, stating that his establishment at the Sault was burnt in 1762, and that it had been rented out.

12. Letter from James Murray, governor of Canada, to the Chev'r De Repentigny, dated Quebec, March 6, 1764, the note of Le Breton to the same, and the letter of said Murray to said Chevalier of the 17th of March, 1764, from the Dossier at Paris, July, certified and sealed, being Paris Document No. 20.

13. Paris Document No. 29, being a copy of a note found in the Dossier at Paris, being an inventory and valuation of the property of the Chev'r Repentigny in Canada (duly certified and sealed,) to be taken in connection with Paris Document No. 21.

14. Memorandum from the Dossier, Paris, Dec. 19, duly certified and sealed, relative to the chevalier's military services, and stating that he was deserving of the cross of the St. Louis.

334 15. Paris Doc. No. 16 (Dossier,) duly certified and sealed, relating to the concession of the Sault S'te Marie and what De Bonne and De Repentigny had done there by way of settlement.

16. Paris Document 13, being an acte de notoriete taken before Rigordy and his colleague, notaires publics at Martinique, Jan'y 31, 1800, duly certified under the seals of the French government.

17. Paris Document No. 27, being an extract of the archives (Dossier) from the ministers de la marine et des colonies, relating to the public services of Louis Gaspard de Repentigny, duly certified under the seals of the French government.

18. Procuration of the widow of the Chev'r de Repentigny to Raymond Quesnel, dated May 29, 1761, under the provincial seal of Canada.

91. Paris Document No. 34, being from the Dossier, relating to the application of the Chev'r de Repentigny for a pension, dated 5 June, 1765, duly certified under the seals of the French government.

20. Paris Document 35, taken from said ministers, being a memorandum that the Chev'r Repentigny was appointed commandant at the Isle de Re in May, 1769, duly certified under said seals.

21. Paris Document 36, on the same subject, authenticated in the same manner.

22. Paris Document 37, showing that he was at the Isle of Re,
335 Jan'y 2d, 1770, and asked the grade of lieut. colonel, authenticated in the same manner.

23. Paris Document 38, authenticated in same manner, being a letter from the Chevalier Repentigny to the minister, dated Isle of Re, 21 April, 1772.

24. Paris Document 40, authenticated in the same manner, showing that he is appointed colonel of the regiment de Amerique.

25. Paris Document 42, authenticated in same manner, being a letter from the Chev'r de Repentigny to the minister, showing that his regiment started from Rochfort, where the letter is dated, Feb'y 19, 1775.

26. Paris Document No. 45, authenticated in same manner, being a letter from the Chev'r Repentigny to the minister, dated Paris, Aug. 24, 1775, which acknowledges his appointment as a brigadier, and refers to—

27. Paris Document No. 33, which (authenticated in same manner) rehearses the fact that he had been offered a military rank in Canada, which he refused.

28. Paris Document 49, authenticated in same manner, being a letter from the Chev'r de Repentigny to the minister, of May 31, 1776, showing that he had just anchored at the Fort Royale, Martinique.

29. Paris Document 51, thus authenticated, being a letter dated 8th July, 1776, from Le Comte d'Arband, governor of Guadeloupe, to the minister, showing that the Chevalier Repentigny had arrived there.

336 30. Paris Document 56, thus authenticated, being aletter from said D'Arband, dated July 6, 1777, showing that the Chevalier was still at Guadeloupe.

31. Paris Document 57, thus authenticated, being a letter from the Chev'r de Repentigny to the minister, thanking the latter for the appointment of his son as an enseigne de vaisseau, dated July 11, 1777, at Basseterre, Guadeloupe.

32. Paris Document 62, thus authenticated, being a memorial of the services of the Chev'r Repentigny at Guadeloupe, dated 17th Jan'y, 1780.

33. Paris Document 63, thus authenticated, being a letter dated Paris, 28 Sept., 1782, from the chevalier to the minister.

34. Paris Document 22, being thus authenticated, relating to the application of young De Bonne for a copy of the brevet of ratification dated April, 28, 1782.

35. Paris Document 64, thus authenticated, being a letter from the Chev'r Repentigny to the minister, asking to be made a marechal de camp, dated Paris, May 4, 1783.

36. Paris Document 23, thus authenticated, being an order of the minister making the Chevalier Repentigny governor of Senegal.

37. Paris Document 24, thus authenticated, being instructions from the minister to the Chevalier Repentigny and Bailly, dated 18th Nov., 1783, for the government of Senegal.

337 38. Paris Doc. 67, thus authenticated, being a letter from De Repentigny and Bailly to the minister, dated Senegal, March 2d, 1784.

39. Paris Doc. 68,thus authenticated, being a letter from the Chev'r de Repentigny to the minister, dated Senegal, Nov. 20,1785, asking for a furlough (conge) for one year.

40. Paris Doc. 70, thus authenticated, being a letter from the Chev'r Repentigny to the minister, dated Lagos, Portugal, May 28, 1786, showing him to be dangerously ill.

41. Paris Doc. 25, thus authenticated, being a certificate of the death of the Chev'r Repentigny, in Paris, Oct. 9, 1786.

42. Paris Doc. 73, being a letter of instructions from the minister to Messrs. De la Jonquiere et Bigot, dated Versailles, June 14, 1750, relative to the object of Franquet's journey to New France, certified under the seals of the French government.

43. Paris Doc. 75, thus authenticated, being a letter from the minister to M. Franquet, dated at Versailles, May 15, 1752, relative to the defense of Quebec.

44. Paris Doc. 76, thus authenticated, being a despatch from the minister to M. Franquet, dated in 1752, relative to his stay at Isle Royale, &c.

45. Paris Doc. 77, thus authenticated, being a letter from Governor Duquesne to the minister, dated Nov. 3d, 1752, showing that Franquet was then on Isle Royale.

46. Paris Doc. 79, thus authenticated, being a letter from said
338 Franquet to the minister, dated Quebec, Nov. 4, 1752, relative to the fortifications of Quebec.

47. Paris Doc. 81, being a letter of instructions from the minister to said Franquet, dated Versailles, April 13, 1753, thus authenticated, relating to Franquet's plans of fortifications, &c.

48. Paris Doc. 80, thus authenticated, being a letter from Governor Duquesne to the minister, dated Quebec, Feb'y 24, 1753, relating to the fortifications of Quebec and Franquet and De Levy.

49. Paris Doc. 83, thus authenticated, being a statement of the offices held by Franquet from 1751 to 1754, inclusive.

50. Paris Doc. 84, thus authenticated, being the appointment of Franquet as engineer-in-chief of New France, dated May 1, 1754.

51. Paris Doc. 92, thus authenticated, being a letter from the minister to the Chev'r de Bonne, informing him that he had sent to Gov. de la Jonquiere a commission to raise a company in Canada, dated Versailles, June, 1751.

52. Paris Doc. 93, thus authenticated, being a letter from the minister to De la Jonquiere and Bigot, dated June 25, 1751, transmitting the brevet of ratification for De Bonne and De Repentigny, and asking for reports of the progress of settlements, &c.

339 53. Paris Doc. 43, thus authenticated, being a letter from Chev'r Repentigny to the minister, showing his poverty, and asking for a pension for his niece, dated at Rochefort, May 2d, 1775.

54. Paris Doc. 44, thus authenticated, being a memorial on the same subject, and granting the pension, under date May 14, 1775.

55. Paris Doc. 47, thus authenticated, showing the chev'r received an advance upon his salary of 6,000 francs, Jan. 6, 1776.

Also the following documents, &c., viz:

56. Journal of the House of Representatives, U. S., of Dec. 15, 1826, 2d sess. 19 th Cong., p. 59, for the first presentation of the claim by Mr. Cambrelling, of N. Y., and its reference to the Committee on Private Land Claims.

57. Report of said committee thereon, dated Jan'y 2d, 1827, found in Dickens & Allen's State Papers, vol. 4, of Public Lands, p. 863. (In the Detroit Young Men's Library.)

58. Petition of Agnes Slacke (not printed) to the Senate and House of Representatives, U. S., presented Dec. 20th, 1833, and the references thereof in that year, in 1834 and in 1836, a copy certified by the clerk of the Senate.

59. Petition of Agnes Slacke, presented in the Senate Jan. 14, 1841, and referred to the Committee on Private Land Claims, being Senate Docu-
340 ment 77, 2d sess. 26th Congress, found in vol. 3 of Senate Documents of that session.

60. Petition of the Repentigny heirs, by the attorney, C. E. Violet, presented in the Senate January 14, 1841, being Doc. No. 78, 2d sess. 26th Congress.

61. Report of Committee on Public Lands in the U. S. Senate of Aug. 10, 1856, including copy of the petition of Agnes Slacke, being report No. 487, 1st sess. 29th Congress, found in vol. 9 of Senate Doc'ts of that Congress.

62. Report of Committee on Public Lands of the Senate of April 13, 1858, vol. 179, 1st sess. 35th Congress, by Mr. Benjamin.

63. Pieces et documens relatifs a la tenure seigneuriale, demandes par une addresse de' assemblee legislative, 1851, printed at Quebec, 1852, passim, and particularly pages 220 and 221, under the provincial seal of Canada, being a report made under the resolution of the legislative assembly of the province, passed Aug. 29, 1851, asking the governor to cause to be procured copies of all the grants and titles by concession, which have been made, and which can be found in the public archives of the province, &c.

64. Discharge of the lien for purchase-money retained in the notarial deed of P. A. De Bonne to James Caldwell, the discharge bearing date June 30th, 1798, duly certified under seal.

341 The counsel of the petitioners reserve the right to add to the foregoing list any other documents, histories, &c., which they deem material in the cause.

April 4, 1863.

(Signed) J. M. HOWARD,
Sol. and of Counsel for Petitioners.

Additional list of documents, &c., which will be referred to by the counsel for the petitioners on the final hearing, under the stipulation on that subject entered into by the parties, and bearing date the 19th and 21st days of November, 1862.

66. Parkman's History of the Conspiracy of Pontiac, ch. 16, 17, 283, &c., and p. 317, &c.

67. Paris Doc. 43, being a letter from the Chev'r de Repentigny to the French minister, dated May 2d, 1775.

342 58. Paris Doc. 44, note to the minister, dated May 14th, 1775, for money to the niece of the Chev. de Repentigny, granted.

69. Paris Doc. 64, letter from the the Chev'r de Repentigny, dated 4th May, 1783, to the minister.

70. Paris Doc. 41, being a memorandum granting the Chev'r de Repentigny 2,000 livres.

71. Paris Doc. 95, memorandum from Gov'r Vaudreuil of 1758, showing that the Chev'r de Repentigny was an interpreter at Montreal.

72. Paris Doc. 32, showing the appointment of the Chev'r de Repentigny as a captain, 1st of Jan'y, 1759.

73. Vol. 1, 2, and 3 of "edits and ordonnances" relating to Canadian affairs, and published in French at Quebec, the 1st vol. in 1854, the 2nd in 1855, and the 3d in 1856. These three vols. will be referred to as containing the laws of Lower Canada, as established by the executive government of France in that colony while under French rule.

74. A collection of the acts passed in the parliament of Great Britain, and other public acts relative to Canada, printed at Quebec, 1824. Reference will be had to pp. 7, 26. 34, and to pp. 6, 10, and 28 of 1797, and p. 3 of 1791.

75. The 2 vols. of Wm. Smith's Hist. of Canada from its 1st discovery, printed at Quebec in 1815, (the year of 1791,) including all the passages noted in my previous notice and various passages in vol. 2 on pp. 1, 69, 163, 164, 165, 214, 220, 221, 222.

76. Alexander Mackenzie's Voyages, from p. 1 of the general his-
343 tory of the fur trade to p. 87, and to this book wherever it relates to the subject of this suit.

77. Albach's Annals of the West, printed at Pittsburg, 1857, p. 407 to 417, p. 640 et seq.

All which books and documents are now in my possession, and subject to be examined by the counsel for the respondents on request.

(Signed) J. M. HOWARD, *Sol. for Pet'rs.*

May 19, 1863.

345 EXHIBITS REFERRED TO IN THE FOREGOING NOTICES SERVED UNDER STIPULATIONS FILED 19TH AND 21ST NOV'R, 1862.

Exhibits A to Y, inclusive, are printed books, obtainable in public libraries.

Exhibit Z.—See post appendix of documents admitted to be read on the hearing without proof. Doc. No. 4.

347 Exhibits AA to AG are also printed books obtainable in public libraries.

Exhibits 1, 2, and 3 are comprised in petition, near the beginning. See also Detroit depositions No. 1.

349 *Exhibit 3a, being Paris document No. 94.*

Translation.

VERSAILLES, *June 16th*, 1752.

To Mr. Le Mis. Duquesne:

I answer the letters which Mr. Le Mis. de la Jonquiere wrote me the 4th, 5th, 6th, 25th, and 28th October of last year on the subject of the establishment of divers posts, and I begin by a general observation.

It is that such sort of establish ments ought not to be undertaken but with a great deal of reflection and con sideration upon the motives of well-established necessity or suffisant utility.

Those who propose them are never short of specious and plausible reasons for their adoption.

They always have in view the good of commerce, or the importance of restraining some Indian nation, but the most often it has been proved that they act under private interest.

These posts however cost great deal to the king as well for their establishment as for their keeping, and serves sometimes only to occason movements and desorders.

Thus the king desire not only that you should not bind yourself to any new establishment of that sort except after having well recognized its advantages, but also that you should examine if among those which have been made for some years past there are not some that it will be good to suppress.

And his majesty recommend you the greatest attention on that subject.

May be [possibly] the post that Mr. de la Jonquiere established upon the lake "a la Carpe" is in that last cathegory. * * *

By one of my dispatches, written last year to Mr. De la Jonquiere, I had said [intimated] to him that I had approved of the construction of a fort at the Sault Ste Marie, and the project of cultivating the land there, and
350 raising cattle there. We cannot but approve the dispositions which have been made for the execution of that establishment, but it must be considered that the cultivation of the lands and the multiplication of cattle must be the principal object of it, and that trade must be only the accessory of it.

As it can hardly be expected that any other grain than corn (blé d'Inde) will grow there it is necessary, at least for awhile, to stick to it, and not to persevere stubbornly in trying to raise wheat.

The care of cattle at that post ought to preced that of the cultivation of the lands, because in proportion as Detroit and the other post of the south shall be established, they will furnish abundance of grain to those of the north, which will be able to furnish cattle to them.

The establishments of Toronto and of the portage of Niagara, of which Mr. De la Jonquiere speaks in his letters, were also approved last year.

* * * * * * *

I am perfectly, &c,

T.

Certified: ministry of foreign affairs. [L. S.]
Certified. [L. S.]

351 Exhibit 4 is comprised in petition, being Exhibit I, thereto annexed.

353 *Exhibit* 5, *being Paris document* No. 46.

Translation.

Extract from the documents preserved in the archives. Extract from the controls of the officers, civils and military. Canada and Louisiana, 1693–1776.

Chev. de Repentigny appointed to the command of the depot of the recruits of the colonies at the island of Re, the 1st of April, 1769; cadet in 1739; expve. of enseign in second, 1741; enseign in second, 1742; ensign, 1748; lieutenant, 1751; captain, 1st Jan'y., 1759; chevalier of St. Louis, Aug. 20th, 1762.

Certified and sealed.

355 *Exhibit* 6, *being Paris document No.* 15.

Translation.

Extract from the documents preserved in the archives de la marine and des colonies. Copy of a letter addressed to the minister by Mr. La Jonquiere, governor general of New France.

QUEBEC, CANADA, *October 5th*, 1751.

MY LORD: By my letter of the 24th August, of last year, I had the honor to let you know that in order to thwart the movements that the English do not cease to make in order to seduce the Indian nations of the North, I had sent the Sr. Chevr. de Repentigny to the Sault Ste Marie, in order to make there an establishment at his own expenses, to build there a palissade fort (fort de pieux,) to stop the Indians of the northern posts who go to and from the English, to interrupt the commerce they carry on, stop and prevent the continuation of the talks, ("*paroles*,") and of the presents which the English send to those nations, to corrupt them, to put them entirely in their interests, and inspire them with feelings of hate and aversion for the French.

Moreover, I had in view in that establishment to secure a retreat to the French voyagers, especially to those who trade in the northern part, and for that purpose to clear the lands which are proper for the production of Indian corn there, (blé d'Inde,) and to subserve thereby the victualling necessary to the people of said post, and even to the needs of the voyagers.

The said Sr. de Repentigny has fulfilled, in all points, the first object of my orders.

As soon as he arrived at Missilimakinac the chief of the Indians of the Sault Ste Marie gave to him four strings of wampum, (porcelaine,) and begged of him to send them to me, to express to me how sensible they
356 were for the attention I had for them by sending to them the Sr. Chevalier de Repentigny, whom they had already adopted as their nephew, (which is a mark of distinction for an officer amongst the Indians,) to signify to them my will in all cases to direct their steps and their actions.

I have given order to said Sr. de Repentigny to answer at the talk ("*parolle*") of that chief by the same number of strings of wampum, and to assure him and his nation of the satisfaction I have at their good dispositions.

The Indians received him at the Sault Ste Marie much joy. He kindled my fire in that village by a neckless, which these Indians received with feelings of thankfulness.

He labored first to assure himself of the most suspected of these Indians. The Indian named Cacosagane told him, in confidence, that there was a neckless in the village from the English; the said Sr. de Repentigny succeeded in withdrawing that neckless, which had been in the village for five years, and which had been asked for in vain until now. This neckless was

carried into all the Saulteux villages, and others at the south and at the north of Lake Superior, in order to make all these nations enter into the conspiracy concerted between the English and the Five Nations, after which it was put and remains in deposit at the Sault Ste Marie. Fortunately for us, this conspiracy was revealed and had not any consequence.

The Sr. de Repentigny has sent me that neckless, with the talk ("*parolle*") of Apacquois Massisague, from village the head of Lac Ontario, to support that neckless, which he gave to the Saulteux of the foot of the rapides of Quinilitanon.

He sent me also the talk ("*parolle*") given by the English in the fall of 1746 to form this conspiracy. I have the honor to send you enclosed, my lord, a copy of those two talks, ("*parolles,*") by which you will see to
357 what excesses the English had pushed their malignity for the destruction of the French, and to make themselves masters of our forts.

The said Sr. de Repentigny forbid the Indians of his post to go and winter at Saginaw, which is not little to say, for these nations go thence from there very easily, and in a short time to the English, who load them with presents. These Indians kept the promess which I required from them; they all stayed in Lake Superior, whatever were the inducements the English made to attract them to themselves.

The said Sr. de Repentigny fears that the nations of his post will go to war against the Sioux, and that it will be difficult for him to retain them, because they maintain that they have no part in the peace that the Saulteux of Cheagamigon have made with the Sioux. I gave him order to use every means to stop the parties which could be found, and I hope he will succeed.

In regard to the second object of my orders, the said Sr. de Repentigny has neglected nothing to fulfil it.

He arrived too late last year at the Sault Ste Marie to fortify himself well; however, he secured himself against insults in a sort of fort large enough to receive the traders of Missilimakinac.

The weather was dreadful in September, October, and November. Snow fell one foot deep on the 10 of October, which caused him a great delay. He employed his hired men during the whole winter in cutting 1,100 pickets, of 15 feet, for his fort, with the doublings, ("*rendoublages,*") and the timber necessary for the construction of three houses, one of them 30 feet long by 20 feet wide, and the two others 25 feet long, and the same width of the first.

His fort is entirely finished, with the exception of a redoute of oak, which he is to have made 12 feet square, and which shall reach the same
358 distance above the gate of the fort. As soon as this work shall be completed, he will send me the plan of his establishment. His fort is 110 feet square.

The said Sr. de Repentigny has observed to me that during the winter he sent rafts of wood down the Sault Ste Marie, through a spring of warm water there,* which is a curiosity for that country, where ice is more common than anywhere else.

As for the cultivation of the lands—

The Sr. de Repentigny had a bull, two bullock, three cows, two heifers, one horse, and a mare, from Missilimackinac.

He could not, on his arrival, make clearing of lands, for the works of his fort had occupied entirely his hired men, (engages.)

Last spring he cleared off all the small trees and bushes within the range of the fort.

He has engaged a Frenchman, who married at the Sault Ste Marie an

* The expression is: "Il a fait sauter des cajeux de bois dans le Sault Ste Marie a travers une source d'eau chaude." The meaning is not obvious.

Indian woman, to take a farm; they have cleared it up and sowed it, and without a frost they will gather 30 to 35 saks of corn, (ble d'Inde.)

The said Sr. de Repentigny so much feels it his duty to devote himself to the cultivation of these lands, that he has already entered into a bargain for two slaves, whom he will employ to take care of the corn that he will gather upon these lands.

I beg of you, my lord, to be well persuaded that I shall spare no pains to render this establishment equally useful to the service of the king and to the accommodation of the travellers, (voyageurs.)

I am, with a very profound respect, &c.,

(Signe) LA JONQUIERE.

Certified and sealed.

359 Exhibit 7. See Detroit depositions, (No. 1,) Exhibits 44 and 45.
Exhibit 8. See Detroit depositions, (No. 1,) Exhibit 38.

361 *Exhibit* 9, *from large blue bundle, Montreal document.*

Translation.

Copy of a letter from Marquis Duquesne, governor general of Canada, to the minister at Paris.

MY LORD: I have the honor to give you the account of what passed in the posts during the year.

The Indians of the north are very quiet, because the S'r Marin, who command at the bay, and who leads the Indians as he pleases, has procure tranquility for them by the peace that he has made between them and the Christinaux.

The Saulteux, of Camanestigna, and Michipicotan had some altercations between them. Seventeen has been killed, but this animosity has now appeased and has caused no other prejudices but to the hunting, and they are quiet now.

The S'r Chev'r de Repentigny, who command at the Sault Ste Marie occupies himself much with the establishment of his post, which is essential to stop the Indians who come down from Lake Superior to go to Choneguen, (Oswego,) but I don't hear it say that this post is of [yields him] a great revenue.

The Pontwalamis, Kikapoux, Maskontins, and Scioux, &c., &c., &c.

* * * * * * * * * *

(Signed) MARQUIS DUQUESNE.

Quebec, October 13th, 1754.

Certified and sealed.

363 *Exhibit* 10, *from large blue bundle, Montreal document.*

Translation.

Copy of a "procuration" (power of attorney) given by the Chevalier Louis le Gardeur de Repentigny to his aunt, Domoiselle Marie Cathrine le Gardeur de Repentigny, on the 9th of August, 1749.

Before the royal notaries of the royale jurisdiction of Montreal, residing there, undersigned, was present Louis le Gardeur de Repentigny, ensign of infantry, residing in this city, St. Paul street, who being on his departure for the post of Michilimakinac for his majesty's service, has, during his absence, made and constituted, as his procuratrix, general and special, Dam'elle Marie Catherine le Gardeur de Repentigny, his aunt, to whom he gives power, for him and in his name, to manage, govern, and administer all his proper-

ties and business, receive all sums which are and may be due to him, as well in capital as interests and other accessories, even for his salary in said quality of enseign of infantry, or for other employment that he should exercise in the future; also, by promisory notes, promises, obligations, or otherwise, even for gratifications and reward, or for revenues of etat which belong to him or should belong to him afterwards, as rents due from private letters and inheritance in whatever places they may be, and all other revenues of whatever nature they may be, even the principal [capital or] of the rents, if they are offered; to give valable discharge of all receipts of money, settle with all farmers, tenants, and other debtors, close and stop said accounts, fix the balance of them, and, upon denial of payment or to furnish any account made against all debtors, all [to use] prosecution, constraint, and necessary diligences, as to seizure, arrest, execution, sale of furniture, even by real seizure and sale of their estate, opposition and impeachments necessary to follow the
364 whole as far as definite; make all leases for rent of houses and farms to such persons, for such terms, prices, charges, clauses, and conditions as the said dam'elle will think and judge proper, renew them at their expiration to the same persons or others, and for such time, price, charges, and conditions as shall seem good to her; retract the said leases with or without damages; cause to have all the repairs made on all the houses and buildings which belong to him at present, in common with his brothers, and which may belong to them hereafter, whether in common or to him individually; also, the necessary reconstructions or such new constructions or improvement as the said dam'elle shall judge to be good, for the consideration of the price, charges, clauses, and conditions that she shall see fit. The said s'r constituent also gives power to the said dam'elle, procuratrix, to make partition and liquidation of the rights of the inheritance devolved to said constituant by the decease of his father, mother, grandfather, and grandmother, or even to sell, cede, quit, abandon, transport, and exchange the same to such persons and in consideration of the prices, charges, clauses, and conditions that said dam'elle shall see fit; all the successive rights to real estate, fruits, profits, and revenue and those which may belong to him in said successions, receive their price, and all that shall come to him by the lot of *of* partage, any is made; the said lot she will accept equally and give receipt; to commence all actions in courts, defend all those which can be commenced, for whatever cause, and against all persons whatever, to judgment and definitive decrees, put them into execution, compromise, negociate, compose by way of arbitrators and by means of arbitrators or amicably, make all compromises and prorogation of them; to comply with the sentences of the umpire or make an appeal from them; to appeal also from all other sen-
365 tences and judgments, and by all ways, according to the exigencies of the cases, plead, oppose, appeal, elect residence, to appoint substitutes to all or part of the above powers, revoke them or constitute others, these present being always in force and virtue; to pass and sign for the above objects, by the said dam'elle, procuratrix, and by her substitutes, if she substitute any, all contracts of sale, transfers, transactions, agreements, partitions, conventions, discharges, and all other acts, of whatever nature they may be, subject to all the charges, clauses, and conditions as she may judge fit and to such security she shall think proper and generally, &c.; giving her even power for things which could not have been foreseen and which would require a more ample power not expressed in these presents, which shall not be construed to require letters of renewal, and shall be in force until express revocation; the said S'r constituant promising to ratify, although the want of ratification on his part shall not hinder the execution of what shall have been done in virtue of these presents under the obligation, &c.

Made and passed at said Montreal, office of Danre, one of the said notaries,

in the year one thousand seven hundred and forty-nine, the ninth of August afternoon, and the said s'r constituant has signed after reading.

(Signed) LEGARDEUR CHEVALIER DE REPENTIGNY.
ADHEMAR.
(Signed) DAME DE BLANZY.

Certified and sealed.

367 *Exhibit* 11, *being Paris document No.* 21.

Translation.

COLINE, 1765.

Memoir of the services of Louis-le Gardeur Chevalier De Repentigny, chevalier of the royal and military order of St. Louis, heretofore captain in the "campagnies franches" of the marine kept in Canada, presented to Mr. Dubuc, chief of the bureaux of the colonies:

The 1st of May, 1739, he entered the service at the age of 14 years, in a campaign of one year, at 900 leagues from Quebec, against the Tchicachas (Chickasaw) Indians, under the orders of Mr. De Celorom.

The 1st of May, 1750, Mr. Le Marquis de la Jonquiere, governor-general, charged him by order of the king (de la cour) with an establishment, at the entrance of Lake Superior in order to interrupt, if possible, all relations and affinity between the Indians of the north and the five Irroquois nations whom the English were stirring up to engage these northern Indians in their interests. He fulfilled so well the intentions of that general, that as soon as the following year he asked the concession of that establishment for the Chevalier Repentigny in order to attach him for a longer time to this command, where he thought the presence of Repentigny necessary for the good of the service.

This establishment was burnt in 1762 by the Indians, at the time his attorney was negociating at Montreal with the English for the sale of that object, which was rented at £400 s. d., since 1755.

(Signed) LE CHE'R REPENTIGNY.

Certified and sealed.

369 *Exhibit* 12, *being Paris document No.* 20.

Translation.

Extract from the documents preserved in the archives de la marine et des colonies.—Copy of a document annexed to the Repentigny dossier.

Copy of the letter of Count de Murray, governor general of Canada, to Mr. De Repentigny.

QUEBEC, *March 6th*, 1764.

SIR: The knowledge I have of your military talents and the esteem I have for yourself, enduces me, by every sort of reason, to try to attach you to this country—the country of your birth. Although it has passed under another dominion it ought to be always dear to you; you are attached to it by too many bonds to be able easily to detach yourself from it.

I ever flatter myself that you will be one of us; in that hope I have a post to offer you; I shall be delighted if you are willing to accept it.

There will be a levy of a battaillon of three hundred volunteers, Canadians. I offer you the command of it with the rank of major, (this rank with the English is equivalent of that of colonel.)

Mr. Bretton will have the kindness to explain to you more clearly than I can by letter, what this title is worth amongst us.

As I can depend upon you, in case of your acceptance, your salary will be greater than for any badyels.

If you take the resolution to stay you cannot do better; it will be the true means for you to procure the favors of the government, (la cour,) and you may depend on me to make your services of value with the au-
370 thorities. Besides I cannot give you stronger proofs of my esteem than by the offer I make you now. If you judge proper to aceept it, it would be good that I could confer with you in regard to the necessary arrangements to be taken in order to render this corps useful. You will have also the goodness to let me know if you think you must not adopt the part that I propose to you. In whatever manner it may be I shall be always with the most perfect esteem, sir, your very humble and very obedient servant,

(Signed) JA. MURRAY.

At the end: To Mr. De Repentigny, at Montreal.

Copy of the letter of Mr. Le Breton, governor of Montreal, to Mr. De Repentigny.

MONTREAL, this 10*th March*, 1764.

SIR: I have an important affair to communicate to you immediately. I should be delighted that, giving up all other business *finished*, you would take the pains to come here, where I will have the honor to confer with you respecting it. My explanation by letter would be long and perhaps undecisive, which induces me to beg of you to come.

I have the honor to be, with a very perfect consideration, sir, your very humble and very obedient servant,

(Signed) LE BRETON.

At the end is written: To Mr. De Repentigny.

371 *Copy of the answer of Mr. De Murray to that of Mr. De Repentigny.*

QUEBEC, *March* 17*th*, 1764.

SIR: Your refusal to command the corps of Canadians, volunteers, is extremely painful to me, for two reasons, first because this corps would have been able to work wonders under your orders; second, that this refusal will not fail to procure your promotion at the court of France, and that, as a good subject of his Britannic majesty I ought not to wish that officers of your merit should be advanced in the service of a prince who, in the course of time, may again become our enemy.

You see, sir, that I speak here as a patriot, for if I consulted only the impulses of my heart, I could not but to be extremely flattered to see merit rewarded and to have contributed to the fact.

I have the honor to be, with esteem, sir, your very humble and very obedient servant,

(Signed) JA. MURRAY.

At the end is written: To Mr. De Repentigny.

Certified and sealed.

373 *Exhibit No.* 13, *being Paris document No.* 29.

Translation.

Extract from the documents preserved in the archives de la marine and des colonies.—Copy of a memo. without date and without signature annexed to the dossier Repentigny.

Description of the estates which I possess in Canada.

A house situated on the place of the cathedral of Quebec, with its dependencies of 20 *toises* square, to Cheptel in 1757. F. 23,000

Three leagues of seigniory at the mouth of Lake Superior at the Sault Ste Marie, rented for the fur trade until 1760, 2,000....	40, 000
A house in Montreal, situated near the government house, containing 25 *toises* square of land, paid for in 1753.....	13, 000
The estate "de la Chesnay and de la Mascouche" bought from my elder brother, now rented, 3,500.....	90, 000
A saw-mill rented, 900.....	18, 000
A water-mill, with 2 millstones, rented 2,000	40, 000
A wind-mill, rented, 240.....	4, 800
The seigniorial house, with 50 arpents of land in cultivation, rented 160.....	3, 200
The estate of "L'Assomption," devolved to me by inheritance of a sister of my father, rented 1,200.....	24, 000
The estate de Repentigny, rented 600.....	12, 000
	278, 000

Certified and sealed.

375 *Exhibit* 14, *being Paris document No.* 19.

Translation.

Extract from the documents preserved in the archives de la marine and des colonies.—Copy of a minute of certificate annexed to the dossier Repentigny, No. 9.

16*th of August*, 1762.

The Chevalier de Repentigny, captain in the troops of Canada, has always been reputed to be one of the most gallant officers of this colony, whether at the head of the Indians or with the detachments of Indians with whom he has made the greatest part of the war.

He has 21 years of services as officer. He would have been proposed last year for the cross of St. Louis, as the other captains of Canada of the same seniority, had he not been suspected of having carried on trade, but as his trade has not mixed him up in anything with the business of the king of the colony, he is believed worthy of that favor at present, when he is about to start for Newfoundland, the commandant of that place having sent for him to remove the Indians from the neighborhood.

Certified and sealed.

377 *Exhibit* 15, *being Paris document No.* 16.

Translation.

Extract from the documents preserved in the archives de la narine and des colonies.—Extract of a statement noted as having been transmitted to the minister in a letter from Messrs. Duquesne and Bigot, of the 26th September, 1752.

List of the concessions in seigniory granted in the colony of Canada since September 23d, 1736, up to September 3d, 1751, annotated of the works which have been made there, and of the inhabitants who settled there, or who have take lands there.

18 OCTOBER, 1750.

To Messrs. Debonne and Chev'r de Repentigny:

The Sault Ste Marie, with six leagues of front, with six leagues of depth, bordering the river which separates the two lakes.

They are clearing up lands, and are bringing (font venir) cattle from the Illinois, in order to establish a farm, (une metairie.)

Certified and sealed.

379 *Exhibit* 16, *being Paris document* 13.

Translation.

Extract from an act of notoriety taken at Martinique January 31st, 1800.

Before the undersigned, royal notaries in the island of Martinique, residing in the city of Fort Royal, was present, Mons. Louis Gaspard le Gardeur de Repentigny, chevalier of the royal and military order of St. Louis, ancient officer of the royal marine of France, residing in the city aforesaid, who said and declared that Mons. Louis le Gardeur Chevalier de Repentigny, his father, being an enseign in the troops of Canada, obtained on the 13th of October, 1750, conjointly with Mons. De Bonne, captain reforme in the regiment of Conde infantry, from Mons. De la Jonquiere, governor lieutenant general in New France, and Mons. Bigot, intendant, the concession of the place called Sault Ste Marie, with six leagues of front upon the portage, by six leagues in depth, bordering the river which separates the two lakes; that this concession was confirmed and ratified by a brevet of the king of France, dated the 25th of June, 1751; that this brevet was registered with the clerk of the superior council of Quebec; that in execution of the treaty between England and France, and by the acknowledgment of the limits of the United States and of Canada, the portion of land in question was found to be included within the province of New York; that the representative and heir of Mons. De Bonne, co-proprietor of this land, withdrew from the clerk of the council of Quebec the original title-paper of the concession, to have it recognized and registered in New York, and that in virtue of
380 this title he is peaceably enjoying his co-property.

That the Sieur Chev'r de Repentigny, father of the said sieur, the appearer, having quitted Canada, was successively colonel of the regiments de l'Amerique, attached to the service of the marine at Rochefort, and of those of Guadeloupe and Martinique, and was afterwards governor and commandant-in-chief of Senegal, Isle Goree, and its dependences, and that he died at Paris the 11th of the month of October, in the year 1786; that the said sieur, the appearer, is his only son, and his only heir, and that he had consequently succeeded to all his rights to the land thus conceded to him as above said forth; that the remoteness of the place, and other circumstances, have until this day prevented him from having his rights recognized, but that he now desires to exercise them; that for this he only needs to establish his filiation.

(Here follows a statement of marriages, births, and deaths, and copies of documents on those subjects.)

Done and passed at Fort Royal, in the office of Mons. Rigardi, whose colleague was present, in the year 1800, and on the 31st day of the month of January, forenoon, and the said Sieur De Repentigny and the other sieurs, witnesses, with the said notaries, have hereto signed, after reading done.

(Signed) LE GARDUER DE REPENTIGNY.
(Signed) SINSON DE PRECLERE.
(Signed) DURAND HURAULT DE GONDRECOURT.
(Signed) DEPAZ.
(Signed) RIGARDI.
(Signed) GARNIER DE LAMELOUZE.
(Signed) BON. DE CAMBEFORT.
(Signed) LEVASSOR DE BEAUREGARD.

Certified and sealed.

381 *Exhibit* 17, *being Paris document No.* 27.

Translation.

Extract from the documents preserved in the archives. Dossier of M. De Repentigny, Louis Gaspard.

PARIS, *August* 21*st*, 1822.

The minister:

Certify that it results from the verification of the registers, and authentic papers deposited at the bureau of the military officers; that M. De Repentigny, (Louis Gaspard,) born at Quebec, in Canada, July 10th, 1753, was appointed guard of the marine March 22d, 1770; enseigne de vaisseau, April 4th, 1777; lieutenant de vaisseau, April 4th, 1780; chevalier of St. Louis, October 1st, 1784.

That this officer has not been included in the organization of the corps of the marine ordered by the king January 1st, 1792, because he asked then for his retreat, (retraite.)

That he was employed in quality of lieutenant de vaisseau, chief of the movements of the port at Pointe a Pitre, island of Guadeloupe, on the 1st of November, 1807, and that he died at said port in active service on the second of July, 1808.

Certifies, moreover, that this officer has made eleven sea campaign, both in peace and war.

That he was in the two battles sustained by the frigate the Concorde, on the 21st of August, 1778, and 7th February, 1779, and that he was slightly wounded in the first engagement.

Certified and sealed.

383 *Exhibit* 18, *from large blue bundle, Montreal document.*

Translation.

Power of attorney from Mad'e De Repentigny to Raimond Quesnel.

MONTREAL, *May* 29*th*, 1761.

Was present Madame Marie Magdeleine Chossegros de Lery, wife, &c., procuratrix of Louis Legardeur, esquire, Sieur De Repentigny, pursuant to the power given her by the said S'r, her husband, on the 25th March, 1759, deposited in the office of Panet, one of the undersigned notaries, August 10th, same year, who by these presents voluntarily makes and constitutes as her general and special attorney (procureur) the S'r Raimond Quesnel, merchant in this city, to whom she gives power and authority for her and in her name, to take away [receive] from all persons whom it may concern all the packages of furs belonging to her husband, and which have been left at Michillimackinac, in the hands of M. Beaujeu de Villemonde, ancient commandant of that post; to take away [receive] also the third part of the packages of furs which are at the Sault Ste Marie, arising from the partnership between the said S'r De Repentigny, Caron & Ducouagne, those furs which the Sieur Cadotte may have in his hands, as well as other effects of whatever nature they may be, and give receipt, and good and valuable discharge for the same; [also to receive] to take away again all that may be due to the S'r De Repentigny in bearer (castor) or in furs, and in case of refusal, whether by the depositories or debtors of said packages of furs or other effects, to constrain them thereto, in claiming the authority from those who are intrusted with it; to put all orders and judgment into execution, and generally to do on occasion of the giving up of said furs, and of the collection of what is due to said S'r De Repentigny, all that will be useful and necessary, the said lady constituent promising to have the whole ratified.

Made and passed at Montreal, in the office of Panet, one of the undersigned notaries, the 29th day of May, 1761.

(Signed) LERY REPENTIGNY.
(Signed) PANET.

385 *Exhibit* 19, *being Paris document No.* 34.

Translation.

Extract from the documents preserved in the archives.

COLONIES, *June 5th*, 1765.

The Chevalier de Repentigny, captain heretofore in the troops of Canada, entered the service in 1739. He was made officer in 1741, captain in 1759, and at the time of his destination for the island of Newfoundland, in 1762, he was received chevalier of St. Louis.

He supplicates my lord to award him a pension of twelve hundred francs from the funds of the colonies, and at the same time the brevet of lieutenant colonel.

Refused.

Certified and sealed.

387 Exhibit 20, retained in possession of petitioners' sol.

389 *Exhibit* 24, *being Paris document No.* 36.

Translation.

Extract from the documents preserved in the archives.—Extract from the decree of the king for the creation of the first depot at the island of Re, Sep ber 24th, 1769.

DEPOT OF THE ISLAND OF RE.

It being necessary to send to St. Domingo the officers of the legion of of that colony who are at the Isle of Re, and the recruits of that legion who are in depot there, it is advisable to establish in that same island another depot of recruits, from which will be taken those who are to complete the various corps of troops who serve in the colonies and who do not belong to the war department.

According to this ordinance which has been submitted to his majesty and which he has been asked to approve, this depot will be commanded by a principal officer who shall have under his orders an aid major, a sous aid majors, a captain, two lieutenants, and two sous lieutenants.

It is proposed to his majesty for the fulfilment of these different places, viz: for that of commandant the Sr. de Repentigny, captain in the troops heretofore in Canada, where he has served during more than 25 years with distinction.

For the aid majority, &c., &c.

Certified and sealed.

391 *Exhibit* 22, *being Paris document No.* 37.

Translation.

Extract from the documents preserved in the archives.

ISLAND OF RE, *January*, 1770.

Mr. De Repentigny:

MY LORD: My services placed me, before the place which I now hold from

the goodness of your excellency, in a position to solict the brevet of lieutenant colonel.

My claim is established, my lord, upon 31 years of services, ending in the month of May next, commenced at about fourteen years of age, upon sixteen campaigns, twelve battles or actions, four in which I commanded in chief with success enough to deserve the confidence and approbation of the generals who employed me.

I made two seiges, one fight at sea commanding a detachment of 200 men with six officers for Newfoundland in 1762, when the Duke of Chaiseul honored me with that command.

I was taken by a man-of-war (vaisseau) of 74 guns, the Dragon. To these titles, my lord, I add that the command with which you honored me gives me the same rights to aspire to that rank as Mr. De Faillere who obtained it with the command of the battallion of the recruits of the colonies.

I am contented, my lord, with the salary I enjoy, and aspire only after the military ranks which I think I have earned, and which I hope to obtain
392 from the favor and the justice of your excellency.

I have the honor to be, with a very profound respect, my lord, &c., &c.

(Signed) THE CHER. REPENTIGNY.

Certified and sealed.

393 *Exhibit* 23, *being Paris document No.* 38.

Translation.

Extract from the documents preserved in the archives.

Mr. De Repentigny:

My Lord: The letter with which you honored me the 14th of this month, while filling me with the liveliest gratitude and the most profound respect, inspires me with unlimited confidence to answer it with frankness.

I was, my lord, lieutenant colonel from the beginning of 1770. You have approved the demand that I had the honor to ask you for the brevet of colonel, and to make me expect to obtain it in underwriting my memoir in consequence when taking your orders for my return.

I give an account only to you, my lord, in the place which I occupy.

This advantage and that of serving under your eyes and near you are invaluable to me and infinitely above the one to go to St. Domingo, as second in the grade that I occupy here in chief.

I had the honor to tell Mr. De la Roque, at Paris, and to write to him since, that I prefered my place to all those of the colonies, where I should not be in chief so long as we should be in peace.

In fine, my lord, I thought that after a lease of 30 years of services fufilled with honor in the colonies, and the sacrifice of a future more than reasonable in leaving Canada my native country (ma patrie) I should be able at 45 years of age to claim a regiment in the colonies without too much am-
394 bition. The Count de Sedieres, my very near relative and my friend, assures me that he had the honor to speak of me to you in that way when he begged of you to honor me with you kindness.

My watchfulness, my exactness in the command intrusted to me, the good order and demeanor of my troops, my cares to contribute to diminish the expenses, make me hope, my lord, that you will approve the preference that I give to my command of the depot, if the places of colonel are filled and that this service will entitled me to the continuation of your kindness.

I have the honor to be, with profound respect, my lord, &c., &c.,

(Signed) DE REPENTIGNY

Isle of Re, April 21st, 1772.

Certified and sealed.

395 *Exhibit* 24, *being Paris document No.* 40.

Translation.

Extract from the documents preserved in the archives.—Copy of a letter written by Mr. De Baynes to Mr. De Repentigny, August 12th, 1773.

The king having judged proper, sir, to create for his service at the port of Rochefort a regiment under the denomination of regiment de l'Amerique, I took the opportunity of this occasion to put your services under the eyes of his majesty and to propose you for the colonelcy of that regiment.

His majesty willingly accepted you in that quality and intrusts to you the command of that regiment.

I advise you that the brevet that his majesty has caused to be sent to you in consequence will be addressed to Mr. De Maurville, commandant of the marine in that port.

I have the honor, &c.

Certified and sealed.

397 *Exhibit* 25, *being Paris document No.* 42.

Translation.

Extract from the documents preserved in the archives.

ROCHEFORT, *February* 19*th*, 1775.

Mr. De Repentigny:

MY LORD: The regiment de l'Amerique will embark in two hours. It leaves Rochefort out of debt—at least, nobody within my knowledge has complained on this subject; and after I received your orders, my lord, to pass to the Isle of Re, I took the necessary means to inform myself on the subject.

Mons. Le Comte de Mourville will give you account of our exactitude for the service and of the cares and pains which the superior officers of the regiment d'Amerique have taken to preserve the order, discipline, and police of the corps. In the circumstances in which we arrived at this garrison, we have tried to merit by our exactness and vigilance for the maintenance of good order, the esteem of the chief of the marine, and I believe that in this respect we have attained the end we had in view.

I am with respect, my lord, &c.,

(Signed) REPENTIGNY.

Certified and sealed.

399 *Exhibit* 26, *being Paris document No.* 45.

Translation.

Extract from the documents preserved in the archives.

PARIS, *August* 24*th*, 1775.

Mons. De Repentigny:

MY LORD: I received the letter you did me the honor to write me, with the respect and gratitude I owe for the testimony of esteem and goodness you honor me with. They are infinitely precious to me, and leave me only to desire occasions to merit new ones. I am not afraid to assure you that the colony where you will employ me, my lord, will applaud your choice. The love of truth, goodness of what is essentially honest, the most perfect disinterestedness have ever presided over my actions and movements; and the in-

fluence of the tropics can never enfeeble the principles from which I have never departed.

The rank of brigadier which you have granted me, my lord, and the commission for which you have asked the bureau of war indemnifies me for the prodigious diminution of the increased salary which I solicited; but I have the honor to observe to you in good faith that I made the request only in consequence of my wants and my situation. I will never insist with importunity upon pecuniary favors; you have the proof of it. In fact, since I had the honor to send you my memoir, I have spoken to you only of the desire to be employed uncessingly, but as the 2,400 francs which you have granted me, my lord, is almost my sole resource to-day, when I shall be reduced to my last louis, I will address myself to you with a confidence equal to my frankness and ask for the means of reaching the end of the year; if, contrary to my expectations, I am not employed before that time. Persuaded as I am, my lord, that your engagements will ever be submitted to the preference which you
400 owe to the legitimate children of your department over the adopted, I am with respect &c., &c.

(Signed) REPENTIGNY.

Certified and sealed.

401 Exhibit 27, Paris Doc. 33, retained in possession of pet'rs' sol'r.

403 *Exhibit* 28, *being Paris document No.* 49.

Translation.

Extract from the documents preserved in the archives.

FORT ROYAL, *May* 31*st*, 1776.

MY LORD: I anchored at Fort Royal yesterday at 5 o'cl. in the evening, whence I shall leave for Guadeloupe so soon as the captain shall have sent ashore the provisions with which the ship is laden for the king. Mr. de Courrey not being found here, I have sent his son to Mons. Girardin, uncle of the young man, and have advised Mons. de Courrey thereof by a courier whom I have sent to St. Pierre.

I am, &c., &c.,

(Signed) REPENTIGNY.

Certified and sealed.

405 *Exhibit* 29, *being Paris document No.* 51.

Translation.

Extract from the document preserved in the archives.

BASSETERRE, *July* 8*th*, 1776.

MY LORD: Mons. de Repentigny arrived and was recognized at the head of his regiment fifteen or twenty days ago; this officer employs himself with zeal and intelligence in the interior police, and in all that can contribute to keep this regiment in the most exact subordination and the best possible order, in whatever concerns the service of the officers—vigilance over the soldier, and the discipline necessary and convenient to restrain him.

I am with respect, my lord, your very humble and very obedient servant,

(Signed) LE COMTE D'ARBAND.

Certified and sealed.

407 *Exhibit* 30, *being Paris document No.* 56.

Translation.

Extract from the documents preserved in the archives.

BASSETERRE, *July 6th*, 1777.

MY LORD: I solicited your kindness in favor of my nephew to obtain the government of Ste Lucia, but my interest for him must yield to the good of the service, and my lord, ever just and beneficent, will make it right. It would be best to give that government to M. de Repentigny, colonel of the regiment of Guadeloupe. He would be better situated there than at the head of his regiment, where he does not show the firmness necessary to restrain and subordinate the officers collected from several different corps. The demeanor and the finances are good, but this corps needs an officer severe, much feared, very much respected; and I think that Mons. de Bourgon, lieut. colonel, is a very proper man to fulfil this purpose. He has spirit; he well undertands the infantry service; he has nerve. This regiment would be in very good hands and the government of Ste Lucia would be very well in those of Mr. de Repentigny, who could not complain of passing to a higher grade than that which he has.

I am with respect, my lord, your very humble and very obedient servant,

(Signed) LE COMTE D'ARBAND.

Certified and sealed.

409 *Exhibit* 31, *being Paris document No.* 57.

Translation.

Extract from the documents preserved in the archives.

BASSETERRE, *July 11th*, 1777.

MY LORD: At any time that I may receive the favors of the king, I will ever receive them with respect and gratitude, and they increase without bounds in value under your ministry, my lord, since they will be a testimony of your esteem and of the kindness with which you have ever honored me and judged me worthy. If the grace I have obtained cannot add to my zeal and my love for the service of his majesty, I have at least to express to him the ardent desire to die under the flag which I command.

I have, my lord, to thank you for the advancement of my son, made an *enseigne de vaisseau*; he is worthy of your kindness, which I ask for him. Since he has served he has won the approbation of his superiors, the esteem and friendship of his comrades.

I shall perhaps be happy enough, should I live, to present him to you one day. Mons. le Marquis de Bouille has seen the regiment. I do not know whether he was pleased with it, but what I do know and can say with confidence is, that he ought to be. I had seven hundred men of the first class to give him, of whom I handed him a list of the names, company by company. He contented himself with seeing 300 of them drill, taken at hazard from the 1st class, the ground not being sufficient to contain more.

I am with respect, my lord, your very humble and very obedient servant,

(Signed) REPENTIGNY.

Certified and sealed.

411 *Exhibit* 32, *being Paris document No.* 62.

Translation.

Extract from the documents preserved in the archives.

The accounts which the Count d'Arband rendered in 1777 and 1778 of his

inspection reviews are to me not less favorable than that which this agreeable letter has furnished me. The king's minister does me the honor to write me, assuring me of the satisfaction of his majesty only respecting the testimonials and accounts constantly rendered him by Mons d'Arband. If in submitting to him, my lord, the first letter of that respectable, wise, and virtuous general, four months after my arrival at Guadeloupe, the epoch of his first inspection review, there had been joined to it the accounts of the subsequent inspections in which he never varied in the praises justly due to the regiment of Guadeloupe, your justice would have put them in the balance, and they would have destroyed the impressions which have been sought to be made upon you on my account in reporting to you that letter. It is upon the testimony, upon the account which Mons. d'Arband has rendered of my labors, that the minister admits that the good condition of this regiment is due to my cares. I have then occupied myself with it successfully.

The confidence in the zeal, ardor, and bravery of the regiment and command, whereof his majesty gave me assurance through his minister, cannot be maintained save by the discipline and subordination which reigns in it. Respecting these I appeal to the testimony of all the chiefs of corps, the commandants in the garrisons who have had detachments from the regiment of Guadeloupe under their orders, to that of Mons. Le Count d'Estaing at Savannah, to Mons. Le Vicomte de Noailles, who there had under his orders and in his division a batallion of this regiment; let him be heard respecting the confidence which the discipline that reigned in it had inspired him.

The praises which it has merited everywhere it has appeared and
412 served prove that discipline and subordination there reign in rigor, and that the steps I have taken to establish both were neither vicious nor sluggish.

Copy of the letter of the minister to Mons. de Repentigny, dated the 17th January, 1780, on occasion of the last inspection review which he passed while commanding the regiment of Guadeloupe.

I announce to you with pleasure, Mons., that upon the account I have rendered to the king of the inspection review of the regiment of Guadeloupe, "his majesty was very well pleased with the flattering testimony which Mons. d'Arband gave of the good condition of this regiment, which is due to your cares, and of the manner in which it showed itself at the affair of Ste Lucia."

His majesty charged me to assure you of his satisfaction, and to announce to you that, to give you proof of it, he has consented to grant you an extraordinary gratification of 3,000 francs, French currency.

"He has, besides, the greatest confidence in the zeal, ardor, and bravery of the regiment which you command."

I have the honor to be very perfectly, Monsieur, your very humble and very obedient servant,

(Signed) DE SARTINES.

Certified and sealed.

413 *Exhibit* 33, *being Paris document No.* 63.

Translation.

Extract from the documents preserved in the archives.

My Lord: I have received the letter you did me the honor to write me.

The permission the king gives me to retire implies that I have asked it; but I am very far, my lord, from wishing to profit by it. The word *retraite* always made me shudder. It is two years since I commenced upon my sixth engagement, and I dare hope that when you shall have the goodness to hear me in the private audience which I ask of you, my lord, in order to give you an account of my conduct at Martinique, you will appeal to the goodness of the king to permit me to continue my services, which may be for a long time useful to his majesty. If I had not calculated upon dying in the service I should not have sacrificed more than four fifths of my fortune, my well-being, that of my family, in abandoning Canada, my country.

In fine, my lord, you are just; you would avoid having to reproach yourself with having maltreated an old officer without reproach, who has presented with honor and distinction a career of more than forty years, and causing him to lose all consideration. Truth is one; it cannot escape your observation.

I am with respect, my lord, your very humble and very obedient servant,

(Signed) REPENTIGNY.

Paris, September 28th, 1782.

Certified and sealed.

415 *Exhibit* 34, *being Paris document No.* 22.

Translation.

Extract from the documents preserved in the archives de la marine and des colonies.—Copy of a ministerial decision annexed to the register of the dispatches and orders from the king for the years 1670 to 1760.—Decision of the 28 April, 1782.

The Sieur de Bonne having presented himself last year at the Castle of St. Louis, at Quebec, in order to render faith and homage as owner of the land of the Sault Ste Marie, conceded in 1750 to his father and to Mons. de Repentigny jointly, the English did not admit him because he presented only the concession of the administrators of the colony. In this state of things there is asked for him a new copy (expedition) of the brevet by which this concession was confirmed at the time. The brevet was indeed sent out in fact the 24th of August, 1751, and the minute is found upon the registers of the bureau of the colonies. Inclosed is a copy thereof, which my lord is asked to sign, with the letter of advice (d'envoi) to Mr. Le Duc de Guines, who interests himself for the S'r De Bonne.

At the bottom is written: Approved, (Approuve.)

Certified and sealed.

417 *Exhibit* 35, *being Paris document No.* 64.

Translation.

Extract from the documents preserved in the archives.

My Lord: I am assured that you are in accord with Mons. le Marquis de Segur to propose to him the brigadiers of your department whom you judge fit for the rank of field marshals, and that in consequence of what I experience since my arrival in France, I was not comprised in the number of the elect. I cannot believe this. Without wishing to penetrate the secrets of your cabinet, permit me, my lord, the honor of reminding you of what I have already had the honor to write you.

That I was lieutenant colonel from the month of March, 1769 or 1770, in the department of war, that I have been mestre de camp from 1773, in the

month of July, and afterwards brigadier from the month of April, 1777; that the field marshals are not taken from the colum of the mestre de camp, but from that of the brigadiers.

I am with respect, my lord, your very humble and very obedient servant,

(Signed) REPENTIGNY.

Paris, the 4th of May, 1783.

Certified and sealed.

419 *Exhibit* 36, *being Paris document No.* 23.

Translation.

Extract from the documents preserved in the archives de la marine, and des colonies.—Copy of the minute of despatch of May 17th, 1783.

VERSAILLES, *May* 17*th*, 1783.

Mr. De Repentigny:

I announce to you with pleasure that the king has seen fit to confide to you the the government of Senegal and its dependencies, vacant by the near return of Mons. Dumontet. I have no doubt that in this mission you will give new proofs of your zeal for the service of his majesty. It is necessary that you should make your dispositions to go to your destination within the time I shall indicate to you.

Certified and sealed.

421 *Exhibit* 37, *being Paris document No.* 24.

Translation.

Extract from the documents preserved in the archives de la marine and des colonies.—Copy of a minute of dispatch annexed to the dossier Repentigny.

FONT, *November* 18*th*, 1783.

Messrs. De Repentigny and Bailly:

I addressed you, Messrs., separately the particular instructions of his majesty respecting the functions of governor and ordannateur which you are to fulfil at Senegal. In communicating them to you, respectively, you will find in them the rules of your joint administration, into which, I doubt not, you will bring the spirit of union and concord necessary to fulfil, to his majesty's satisfaction, the mission confided to you. I inclose a memoir of the king for the information which you are charged to take in common, relating to the respective accusations of Mr. Dumontet and the officers of the administration. His majesty recommends to you carefulness and impartiality. I am well persuaded his views will be fulfilled. He trusts to your prudence and intelligence for the disposal of cases which were not foreseen.

Certified and sealed.

423 *Exhibit* 38, *being Paris document No.* 67.

Translation.

Extract from the documents preserved in the archives.

SENEGAL, *March* 2*d*, 1784.

MY LORD: The observations which Mons. De la Faille has felt it his duty to make along the coast since he became acquainted with Cape Blanco neces-

sarily occasioned some delay in our arrival at Senegal. We leave to that officer, whose intelligence and activity are known to you, the care of rendering you an account thereof.

At present we confine ourselves to having the honor to inform you that we pass the bar the 19th of last month to come here, where Mons. de Repentigny was received at the head of the troops by Mons. Dumontet, who had prepared for his reception the things usual in such cases. In default of a council or of a sovereign court, we caused to be registered, on the 24th, in the bureau of the control de la marine, the papers which were sent us to enable us to fulfil our respective functions. We will not, my lord, enter into any details relative to the condition of this colony or the joint mission with which we are charged. We are occupied in collecting local information, of which we are in need, in order to give you an account thereof at a future day and to leave you nothing to desire in this regard.

We are, with very profound respect, my lord, your very humble and very obedient servants,

(Signed) REPENTIGNY.
(Signed) BAILLY.

Certified and sealed.

425 *Exhibit* 39, *being Paris document No.* 68.

Translation.

Extract from the documents preserved in the archives.

SENEGAL, *November 20th*, 1785.

MY LORD: One does not pass two winterings in Senegal without feeling it, especially with such assiduous labor as that to which I have been devoted since the departure of the Sieur Bailly, which has not diminishsd it in the least. I need to renew my strength in the air of Europe. I have the honor to ask a furlough for a year; I do not refuse to labor; it is to devote myself to it with the zeal and strength which I require. If you think, my lord, that my services and presence will be still of any use at Senegal and Grandeterre, I will return hither before the expiration of the furlough I ask.

In addition to reasons of health, I add that the loss I have sustained of Mad'e de Repentigny since I came to Senegal leaves to me the finishing of some business which my son cannot close up without me.

The wisdom with which Mr. Boucher has commanded and exercised the here to the satisfaction of the whole colony during the three months' absence which I have spent on the lower coast, the knowledge which he had of Senegal and its dependences enables him to supply my place if it be your purpose, my lord, to send me back again.

I am, with respect, my lord, your very humble and very obedient servant,

(Signed) REPENTIGNY.

Certified and sealed.

427 *Exhibit* 40, *being Paris document No.* 70.

Translation.

Extract from the documents preserved in the archives.

FROM LAGOS IN PORTUGAL, *May 28th*, 1786.

MY LORD: I left Goree the 24th of April, on the transport Bayannaise in a condition so threatening that I embarked almost without the hope of arriving in Europe. The wind was so favorable that on the 18th of May we were not

two hundred leagues from France. At this time, after a calm of 24 hours we encountered a hurricane from the north; for three days it was so furious that after having struggled uselessly to sustain ourselves and to prevent deviation from our course, we found ourselves opposite Lisbon, which we could reach only with difficulty. My health failing every day and not being able to reach Vigo, whither I preferred to go, Mons. de Guerpel was forced to come to Lagos. I consented to the proposition he made me on condition that in case the weather should become favorable to us while searching for the port where we anchored last Wednesday, the 24th instant, we should continue our voyage for France; but contrary winds have not been the only motive of his delay; he was extremely short of provisions, and he is busy now in preparing the means of getting to sea the 1st or 2d of the coming month at the latest.

Without the succor which I have found here on the part of the government, which has been rendered with the best possible grace, and the aid of the Sieur Jean Marie Dominges, son of a Frenchman, a native of Lyons * *

I am very impatient, my lord, to arrive in France, less to re-establish my health, if it were susceptible, than to render you an account of my administration. As I hope to be taken to France before the post, which is not to leave Lisbon for France before the 3d of next month, I prefer to carry with me the packets with which I am charged and am to take to you, or to send them to you should I be too ill to undertake to bring them to you myself.

I will have the honor, my lord, to be able to assure you that I have not delayed the Bayannaise. Mons. de Guerpel is not ignorant, and well knows that I have always recommended to him to make use of her as if I were not on the vessel, and that I besought him to pay no attention to my condition, and to pursue his route without regard to me whenever the wind was favorable.

I am, with respect, my lord, your very humble and very obedient servant,
(Signed) REPENTIGNY.

Certified and sealed.

429 Exhibit 41 omitted as being in substance duplicate of Favarger's exhibits 9*a*, 9, and 39, attached to Detroit depositions, No. 1.

431 *Exhibit* 42, *being Paris document No.* 73.

Translation.

Extract from the documents preserved in the archives.—Register of the minutes of the dispatches and orders from the king. Canada, 1750.

VERSAILLES, *June* 14*th*, 1750.

To Messrs. De la Fonguiere and Bigot:

I have informed you that the king might conclude to send to Canada Mr. Franquet, land engineer in chief, who has been destined to go and visit the fortifications of Isle Royale, and who is to go to that colony in the frigate Mutine. His majesty has finally ordered him to go to Quebec next spring, and Mons'r Prevost, the ordannateur at Louisburg, will receive orders to procure for him the means to make the voyage. On his arrival in the colony it will be necessary to have him visit the fortifications of Quebec, and as he must go back in the course of the summer to Louisburg, and as for that reason it is not possible for him to go to the other principal posts of the colony, it is necessary that on his arrival you should be in condition to furnish him with the plans and to give him the information necessary to enable him to concert with you the arrangements which the defence of all those posts may require. It is upon these that his majesty has availed himself of

the talents and experience of Mons'r Franquet and that he has concluded to give him the destination he has to fulfil; and he desires that you may profit by the stay he may make in Canada, not only for the assistance he may render you in giving security to the colony, but also as to the measures it is necessary to take in relation to the rules to be laid down on the subject of the works he may there have to do and to the expense which they shall occasion.

432 I shall expect you to send me a well detailed account of the condition of each post, and of the works which, in concert with Mr. Franquet, you may think each one of them may yet require.

His majesty desires, moreover, that this engineer may only have occasion to speak well of your attentions to him during his stay in the colony; and I am well persuaded that it is unnecessary to give you any recommendations in this regard.

I am perfectly, Monsieur, &c., &c.

Certified and sealed.

433 *Exhibit* 43, *being Paris document No.* 75.

Translation.

Extract from the documents preserved in the archives.—Register of the minutes of the dispatches and orders of the king. Canada, 1752.

VERSAILLES, *May* 15*th*, 1752.

To Mr. Franquet:

Among the various objects which ought, Monsieur, to engage your attention during your stay at Quebec, I regard the present state of the lower town and the projects which are in contemplation relative to the different views which must be entertained respecting that part of the place as most essential. It seems to me that you should think of the defence of the upper town against the lower in case the latter should unhappily fall into the power of the enemy. * * * * * * *

I am, Monsieur, your very humble and very obedient servant.

Certified and sealed.

435 *Exhibit* 44, *being Paris document No.* 76.

Translation.

Extract from the documents preserved in the archives.—Register of the minutes of the dispatches and orders from the king. Canada, 1752.

To Mr. Franquet:

The S'r de Bresson was destined, Mr. to go to Isle Royale, and serve in the quality of engineer, and Mr. Ridde and Montalan, whom he takes with him, had been made sub-engineers in that colony. If these three persons justify the testimony which has been given me respecting them you will be able to make good use of them in the labors on the fortifications. I beg you to inform me duly respecting the talents and the capacity you may find in them, and of the use they make of them. I have nothing to add to what I have explained to you of the claims of the king in my letters of the 15th and 27th of March, respecting the fortifications of Isle Royale. I am waiting for the reports which you are to send me as well of the visit which you have made to the island St. John, and respecting the frontiers of Acadie, as of that which you were to make to Quebec. As to your return, the king will approve, as I have heretofore told you, the course which you shall take whether to return this year to France, or to remain at Isle Royale; and his

majesty is pursuaded you will take that which you believe the most advantageous to his service.

I am, Mr., your servant.

Certified and sealed.

437 *Exhibit* 45, *being Paris document No.* 77.

Translation.

Extract from the documents preserved in the archives.

My Lord: I have the honor to inform you that at the moment I was waiting for Mons. Franquet to work with him to instruct myself respecting the observations he made during his tour at Beausejaur, and Fort St. Frederic, he sent me word that he had the fever, and that not being able to go to France as he had designed, he would have this winter time to acquaint me with his projects. I am sorry for his inconvenience, and for the delay of a year which it causes us. He intends to have the honor to bring you his plans the coming spring. He appears to me to be a man of great capacity in his vocation, and who does not seek to multiply his expenses. Mons'r Franquet, has told me he was extremely pleased with the Sieur de Conagne, sub-engineer. * * *

I am with profound respect, my lord, your very humble and very obedient servant,

(Signed) DUQUESNE.

Quebec, the 3d of November, 1752.

Certified and sealed.

439 *Exhibit* 46, *being Paris document No.* 79.

Translation.

Extract from the documents preserved in the archives.

Quebec, *November 4th*, 1752.

My Lord: The enlargement of the upper town by the new wall, and that which will take place by the one which is projected, * * * * * * * * * I entreat you my lord, to suspend every arrangement in this respect until the projects for the works upon this object shall reach you.

I have the honor to be, with profound respect, my lord, your very humble and very obedient servant,

(Signed) FRANQUET.

Certified and sealed.

441 *Exhibit* 47, *being Paris document No.* 81.

Translation.

Extract from the documents preserved in the archives.—Register of the minutes of the dispatches and orders of the king. Canada, 1753.

Versailles, *April 13th*, 1753.

To Mons'r Franquet:

I received, Mons'r, your letters of the 7th, 20th, 25th, 28th, and 30th of May, the 12th of June, the 12th of July, the 30th of October, and the 4th of November, of the last year, with the different plans and memoirs therein contained. I shall not here enter into the discussion of your projects and views either respecting the fortifications of Canada, or those of the Isle St. John, and of the frontiers of the coast of Acadia. I reserve myself to treate of all these objects on your return here. I will not, however delay, to remark

to you the satisfaction with which I have seen all these details into which you have entered and upon everything which concern them.

These details leave nothing to be desired, and I am persuaded that the same will be true as to the new sugestions which you may add thereto in consequence of the new observations which you may make before your return hither. * * * * * * *

From your answer to the letter I wrote you the 15th of March last year, it appears that you have adopted the changes which have been made here to the two which you have proposed for that.

His majesty, to whom I have rendered a particular account of this answer, was quite content with it.

I am, Mons'r, &c., &c.

Certified and sealed.

443 *Exhibit* 48, *being Paris document No.* 80.

Translation.

Extract from the documents preserved in the archives.

My Lord: I have the honor to inform you that the fortifications of Quebec are sufficiently advanced to await the annual works to be done upon them until their completion. Mr. Bigot, and myself have thought that in the present condition of the finances of the colony it would be best to limit the expenses to a small sum each year. In the present year, which has been very rainy, we have been occupied in closing up the barracks with a solid wall, in covering part of the right wing, and in putting the prisons in condition. Mons. Franquet, will tell you my lord, that this immense mass of barracks seems rather to be made to serve as a magazine than to lodge the troops; I think the Sieur de Lery is a very honest man, but I think him a better draftsman than engineer.

I am with profound respect, my lord, your very humble and very obedient servant,

(Signed) DUQUESNE.

Quebec, the 24th October, 1753.

Certified and sealed.

445 *Exhibit* 49, *being Paris document No.* 83.

Translation.

Extract from the documents preserved in the archives.—Extract from the list of the military officers of the colonies. Canada, 1747. Engineers, page 9.

Franquet, engineer in chief at Isle Royale, 1751; brigadier of the armies of the king, 1754; director of the fortifications in New France, 1754.

Certified and sealed.

446½ *Exhibit* 50, *being Paris document No.* 84.

Translation.

Extract from the documents preserved in the archives.—Civil and military officers of the colonies, 1731, 1761, page 111 of the register.—Brevet of director of the fortifications of New France.

On this first of May, 1754, the king being at Versailles, wishing to give to the Sieur Franquet, engeneer en chef, a new mark of the satisfaction which his majesty feels with the labor which he has done on the plans and projects he has formed for the fortifications of Canada, Isle Royale, and Isle

St. John, and their dependances, during the visit he made by order of his majesty, in said colonies, and to put him more perfectly in condition to execute the said plans and projects whereof his majesty has judged it proper to order the execution, his majesty has established and ordered him to be the director of the fortifications of New France, for and in that quality.

Certified and sealed.

447 *Exhibit* 51, *being Paris document No.* 92.

Translation.

Extract from the documents preserved in the archives.—Register of the minutes of the dispatches and orders of the king. Canada, 1751.

VERSAILLES, *June*, 1751.

To the Chevalier de Bonne:

The flattering testimonials, which the Marquis de la Janquiere has given me of you, Mons., and the interest he takes in what regards yourself, have determined me to procure for you a company in the troops of Canada. I address to him the commission to be sent to you, and I am persuaded that, by the manner you shall conduct yourself in the service of the colony, you will enable me to procure you other favors.

Certified and sealed.

449 *Exhibit* 52, *being Paris document No.* 93.

Translation.

Extract from the documents preserved in the archives.—Register of the minutes of the dispatches and orders from the king, 1751, Canada, page 15.

VERSAILLES, *June 25th*, 1751.

To Messrs. De Lajonquiere and Bigot:

GENTLEMEN: I received the letters which you took pains to write me on the 10th, 15th, 16th, 20th, 26th, and 30th October, and the 2d and 5th of Nov'ber of last year, with the different concessions which were therein contained. * * * * * * * *

I send you at length the brevets which you asked for the concessions, which you likewise forwarded, as well for the Sieur de Bonne and De Repentigny, of a tract of land, situated at the Sault Ste Marie. * * *

Moreover, from the information which I have received, respecting the colony of Canada, I notice that every year concessions are given out, as well for the clearing of the lands as for the establishment of fisheries; as these objects are sufficiently important to justified the king's being always informed of the progress they are making, I beg you to be in condition to render him an account thereof. For this purpose I beg you to send me a list of all the concessions which have been given out during the last fifteen years, as well for cultivation as for fisheries, and to set forth therein the date of each concession, the names of the concessees, (concessionnaires) the number of settlers (habitans,) established upon the concessions in seigniory, (seigneuries,) the condition and product of each fishing post—in
450 a word, all the information necessary to give me exact knowledge.

And after you have sent me this first list, you will be kind enough to render me an account each year of the changes which shall take place in these concessions; adding thereto the same observations upon those which shall continue to be granted.

I am, &c., &c.

Sealed and certified.

451 *Exhibit* 53, *being Paris document No.* 43.

Translation.

Extract from the documents preserved in the archives, granted by decision of May 14th, 1775. R., May 12th, 1775.

ROCHEFORT, *May* 2*d*, 1775.

MY LORD: My oldest brother, appointed commandant of the troops of India in 1769, left an only daughter with the Urseline Nuns of St. Denis with an order to the ex-notary Beauregard, charged with his business to supply the wants of his daughter. As well as myself, he was overwhelmed in the bankruptcy of that man in the month of January, 1774.

Since that time the Urseline Nuns have been unable to apply to any source but me for the board of my neice, and her other wants. My present situation, my lord, makes it absolutely impossible for me, with a revenue of twelve hundred francs, to fulfil this obligation, my compensation forming one of the principal parts of my existence. I have the honor to propose to you to have Mad'elle De Repentigny receive twelve hundred francs a year out of the compensation (appointemens) of her father, which shall be retained at Ponchery until he shall make arrangements to provide it, which cannot be delayed, as I have written to him that he can make no reasonable calculation upon the wreks of this bankruptcy.

If you have the goodness to approve my proposition, I will charge a friend to receive this sum and send it to the nun who has charge of my neice.

I am, with respect, my lord, your very humble and obedient servant,

(Signed) REPENTIGNY.

Certified and sealed.

453 *Exhibit* 54, *being Paris document No.* 44.

Translation.

Extract from the documents preserved in the archives.—May 14th, 1775, Pondichery.

Mons. De Repentigny, colonel reforme of the Rochefort regiment, represents du, my lord, that being by his present situation, unable to aford relief to his neice, Mad'elle De Repentigny, daughter of the former colonel of the Pondichery regiment, and afterwards commandant at Mahe; this young lady, who is in the convent of the Urseline Nuns of St. Denis, finds herself destitute of every species of resource by the distant removal of her father, and by the bankruptcy of the Sieur Beauregard, the notary who was charged to supply her wants, unless my lord would have the goodness to have her receive the sum of twelve hundred francs a year from the salary of her father, which is to be retained from him at Pondichery, until he shall have made arrangements to provide for it. If my lord judges proper to agree to this arrangement, the period of this retention may be fixed at the 1st of January of this year only, to the end that the letter, which shall be written in consequence to Pondichery, may reach there before the end of the year, which is the term at which Mons. De Repentigny shall be held to send a certificate of life.

Good (bon.)

Certified and sealed.

455 Exhibit 55, Paris document 47, retained in possession of petitioners' sol'r.

Exhibit 56 to 63, inclusive, printed books.

Exhibit 64, see Badley's Exhibit H, attached to Montreal depositions, No. 1.

Exhibit 65, none.

456 Exhibit 66, printed book.
Exhibit 67, same as exhibit 53, last above.
Exhibit 68, same as exhibit 54, last above.
Exhibit 69, same as exhibit 35, last above.

459 *Exhibit* 70, *being Paris doc.* 41.

Translation.

Extract from the documents preserved in the archives. Colonies No. 7.

My lord has called here Mr. De Repentigny, in order to settle the arrangements to be taken for the establishment at Rochefort of the "regiment de l'Amerique." He is ready to return. This voyage has caused him an extraordinary expense, for which he is entitled to be indemnified. Consequently it is proposed to my lord to allow him an indemnity of 2,000 livres. Granted out of funds of the colonies.

Certified and sealed.

461 *Exhibit* 71, *being Paris doc.* 95.

Translation.

Extract from the documents preserved in the archives.

In the year 1755, at 8 o'cl. a. m., before us, Pierre Rigand de Nandreuil, governor, lieutenant-general for the king in all New France, lands and country of Louisiana, in our castle of Montreal, appeared twenty Indians, assisted by the Sieur de Joncaire, capt. of the troops of the detachment of the marine, interpreter in the Iroquois language, who told us that the Indians, at the head of which he is, are S8nont8ans by nation, and that they come in deputation in their nation's name, whereupon we have advised Mr. Bigot, consellor of the king in his counsels. * * * * * *

And having called Mr. De Noyan, * * * Messrs. De St. Luc de la Corne, and Chevalier de Repentigny, lieutenant of said troops, and the Sieur Toussaint de Cavelier, also interpreters in the Iroquois language. * * * * * * * *

We certify that the present copy is conform with the original, which stay in our secreteriate, in faith of what we have. Sign the present and cause to affix it to the seal of our arms, and have it countersigned by our secretary.

Made at Montreal, February 15th, 1758.

(Signed) VANDREUIL.
(Signed) By my lord, PAUL SAUVEUR.

Certified and sealed.

463 *Exhibit* 72, *being Paris doc.* 32.

Translation.

Extract from the documents preserved in the archives.—Extract from the controls of the civil and military officers. Canada, 1758, 1761.

List included in the changes made by his majesty, the 1st of January, 1759, in the staffs and in the troops in Canada, to wit: * * *

Captains the Sieurs Chv'r de Repentigny.

Made at Versailles the 1st Jan., 1759.

(Signed) LOUIS & LANER BERRYER.

Compared the 26th May, 1759.

(Signed) DEVILLERS.

Certified and sealed.

465 Exhibits 73 to 77, inclusive, printed books.

467 PARIS DEPOSITIONS FILED 1st APRIL, 1863

Translation.

Direct interrogatories on the part of the said petitioners.

First interrogatory. What is your name and age; where do you reside; and what is your vocation or occupation?

Second. Are you acquainted with the three above-named petitioners, viz: Louise Pauline de Repentigny, Lizette Antoinette, widow of Pierre Murville Bonfilz, Josephine Lucrece, widow of Cyprien Clavie, said three peti-
468 tioners residing on the island of Gaudeloupe? If you know them or either of them, please state how long and at what place.

Third. Were you ever acquainted with the mother of said Louise Pauline, Lizette Antoinette, and Josephine Lucrece? If so, say who she was, where she resided, how long a time, and where you were acquainted with her, and when and where she died.

Fourth. If you have answered that their said mother was, before her first marriage, Marie Antoinette Nicole Aimee Gautheaume, and after the death of her first husband was the widow of Antoine Camille de Repentigny, and that she resided at Petit Bourg, in the island of Guadeloupe, say how
469 many husbands she subsequently had, what were their names, and where they resided.

Fifth. Were you acquainted with her said first husband, Camille de Repentigny, and if so, where did you become acquainted with him, and where did he reside? State particularly at what place, and how long you knew him, what was his occupation or vocation, and when and where did he die.

Sixth. Did you ever know Louis Gaspard de Repentigny, the father of said Camille? if so, say where you knew him, and at what time, as accurately as you can recollect.

Seventh. If you ever had any conversation with said Gaspard respecting his descent and his family, please relate what you learnt from those conversations on the following subjects, viz: 1st. Who was his father, and
470 where was his father born; and who was his mother, and where was his mother born, where were they married, and had they any other child except the said Gaspard? 2nd. Was his father ever in the military service of France in Canada? if so, what was his military rank, at what post was he stationed, and if said Gaspard gave you any information as coming from his father respecting a place known as the Sault Ste Marie, on the river Ste Marie, between Lake Superior and Lake Huron, please relate particularly what said Gaspard told you. 3d. Relate all you remember to to have heard said Gaspard say about his father's having an interest in a fief or seignoiry at said Sault Ste Marie, all he said about his father's having settled there, clearing or cultivating the same or leasing it to others
471 for cultivation, all he said about his father's in the war between France and England, which resulted in the conquest of Canada by the English, and where his said father went at the close of the war, all he said about his father going to France, and being sent by the French government to Senegal, on the coast of Africa, as governor there, the time and place of his father's death, who were the children of his father's marriage, and whether said Gaspard was not the sole child of his marriage.

Eighth. Relate also what you have heard said Camille say on each of the subjects embraced in the above seventh interrogatory.

472 Ninth. Relate also what you have heard the said widow of said Camille, the mother of said three first named petitioners, say on each of the subjects embraced in said seventh interrogatory.

Tenth. If you have stated that you learnt either from said Gaspard, from

said Camille, or from said widow, (Madame Camille,) that the said Gaspard had children other than said Camille, please state what other children he had; and if they are dead, where did they die, what were the times (dates) of their death, and whether any one of them was ever married.

Eleventh. Did you know the mother of said Camille? if so, please state when and where you knew her, and how long a time. Relate particularly what you ever heard her say on each of the subjects embraced in said
473 seventh interrogatory. Did you ever see the mother of said Camille in company with said Madam Camille or in company with the said three petitioners, Louise Pauline, Lizette Antoinette, and Josephine Lucrece, or either of them? if so, when and where? and did she (the mother of Camille) or did she not treat or speak of said widow Camille as her daughter-in-law, and said three last named ladies as her granddaughters and the granddaughters of said Gaspard and of said Madame Camille as their mother? State particularly.

Twelfth. To whom was Madame Gaspard married after the death of said Gaspard, and where did she reside?

Thirteenth. If you have answered that Madame Gaspard was mar-
474 ried to the Count de Marchais, please state where and at what time; whether the count remained with her at Guadaloupe and for how long a time; whether they removed to France; and if so, to what place, and when and where she died, and when and where the count died. State particularly.

Fourteenth. State whether you were ever present at any conversation between Madame Gaspard and Madame Camille or either of them and the above named petitioners, Louise Pauline, Lizette Antoinette, and Josephine Lucrece, respecting the three last named being the lineal descendants of the Chevalier de Repentigny. If so, state what in substance was said on that subject to the said three ladies, or either of them, by said Madame Gaspard or Madame Camille, and whether in your conversations with them they
475 habitually spoke of said three ladies as their lineal descendants and the heirs-at-law of said Chevalier.

Additional interrogatories to Charles Etienne Violet, rue Lamartine, Paris.

Fifteenth. State whether you ever resided on the island of Guadeloupe, in the West Indies. If so, when did you go there how long did you remain there, what was your occupation while there, and whether while there you were personally acquainted with the said three petitioners, Louise Pauline, Lizette Antoinette, and Josephine Lucrece, or either of them, and which of them, and whether you were there acquainted with said Madame Gaspard and said Madame Camille; whether you ever transacted any business for said three petitioners or for said Madame Gaspard or Madame Camille, and
476 what was the nature or kind of such business?

Sixteenth. (To said Violet.) State whether, on or about the 13th day of March, 1841, while you were residing at said Guadeloupe you were present at the office of A. Thionville, a notary public on said island, in company with said Madame Camille and her three daughters, the said Louise Pauline, Lizette Antoinette, and Josephine Lucrece, on an occasion when said Thionville drew up a paper for them, known as an acte de notoriete, in the French language. 1st. If you were present on that occasion, at whose request were you present? 2d. Whether you then heard the said acte de notoriete read over in the presence of those four ladies by said notary.
477 3d. Please state so far as you can remember what other persons were present and what persons signed said acte de notoriete. 4. Whether you at or about that time received from said notary or from said ladies a copy or a duplicate of said acte, and if so, for what purpose, and who delivered it to you.

Seventeenth. (To said Violet.) State whether after the making of said acte you went to Washington, U. S., and for what purpose, and who employed you, and in what year you first went to Washington for the purpose of making a claim for the Saulte Ste Marie Seigniory, and whether you there become acquainted with Mathew St. Clair Clark, then or afterwards the clerk of the House of Representatives.

478 Eighteenth. (To said Violet.) State whether while at Washington you examined or had in your possession a quantity of papers relating to the said claim lent to you or handed to you by said Mathew St. Clair Clark. If so, for what purpose, and what did you do with said papers? 1st. And state whether you found among said papers a deed purporting to have been signed and sealed by one James Caldwell to one Arthur Noble, bearing date on or about the eighteenth day of July, A. D. 1798. 2nd. If you saw such a deed, please state whether you read it; whether it purported to bear the signature James Caldwell, and a seal opposite or near to that name.

479 3rd. Please state the contents of that deed as particularly as your memory will enable you to do, giving its date, the description of the land which it purported to grant or convey, and all you remember touching the contents thereof. 4th. In whose possession did you leave said deed, and what did you do with it?

Nineteenth. (To said Violet or to any other counsellor or person learned in the laws of France who may be examined as a witness for said petitioners.) State how long you have acted as a counsellor-at-law and as a person learned in the laws of France, and where you have carried on the business of said profession. 1st. State whether there is a department of the executive government of France known as the "Ministere de la Marine et des Colonies.."

480 2nd. Whether it is the duty of that department or ministere, under the law or usages of France, to have the custody of papers relating to the military or naval service of France and the French colonies, and whether the ministere or department has and uses a seal for the authentication or verification of copies of such papers. 3rd. State what is meant by the "dossier" of a family in France as preserved by the government; and what, by the laws and usages of France, is the office or purpose of a "dossier," and whether the papers kept in a "dossier" are or are not by French law or usage public documents under the control of the government. 4th. In what ministere or department are these "dossiers" kept and preserved in France?

Twentieth. (To the same.) That the legal effect or value as evidence in a court of justice in France, under the laws or usages of France, of

481 the register or certificate of a "cure" or other ecclesiastical personage, of the birth, marriage, death, or burial of any person. Whether the law or the usages of France render such a register or certificate competent or admissible proof of such birth, marriage, death, or burial, and what authentication or verification of the document is requisite in order to make it competent evidence of the facts it contains? If a copy is offered as evidence in a court of justice, in what manner is such copy required to be authenticated or verified in order to make it admissible as evident in a French court or in any court proceeding under the "civil law."

Twenty-first. (To the same.) State what, according to the laws and usages of France, is the office or purpose of an acte de notoriete is

482 admissible as evidence in a court of justice.

Twenty-second. In case the original of the acte de notoriete cannot by law or usage be removed from the office of the proper notary public, is a copy thereof admissible as evidence in a court of justice? And if so, in what manner does law or usage require the copy to be authenticated or verified? Give your professional knowledge of the laws and usages of France, both ancient and modern, on these points.

Twenty-third. (To each and every one of the witnesses who have been examined.) Do you know anything else material in this case, which you have not yet stated, but which may tend to the benefit or advantage of the said petitioners, or any one of them? If you do, please relate the
483 same as fully and particularly as if you were thereunto interrogated.

The foregoing interrogatories are hereby settled by mutual consent, subject, however, to objections, as will be the testimony taken under them, on the ground of incompetency and irrelevancy.

Detroit, September 6th, 1862.

(Signed) J. M. HOWARD, *Sol. for Petitioners.*
(Signed) ALFRED RUSSELL, *U. S. Dist. Att'y.*

484 *Cross-interrogatories on the part of the respondents.*

First. Are you aware of the nature and object of the proceedings in this matter? Are you connected with the petitioners, or any and which of them, in any and what way? Are you interested in the success of the petitioners in any and what way, directly or indirectly, pecuniarily or otherwise; and if so, to what extent? Set forth the same, and all circumstances and particulars thereof fully.

485 Fifth. Did Antoine Camille de Repentigny ever converse with you on the subject of the seignory of the Sault Ste Marie and his supposed rights thereto? If so, state what he said particularly as to the reasons for which he and his paternal ancestors, respectively, did not reside there or improve the same, and the date at which residence thereby some or one and which of them had been discontinued, and the respective periods, places, and manners in which he or they, that is to say, he, the said Camille, his alleged father, Lo s Gaspard, and his alleged paternal grandfather, the chevalier Louis le Ga leur, had been employed since the said date, and whether they or any o. which of them had at any time thrown off his allegiance to France. And if so, when, and how, and whether they, or
586 any and which of them, had ever by deed during his life, by will or otherwise howsoever, alienated his or their interest in the said Seigniory? What idea did he, the said Camille, express to you as to his supposed rights to the said seignory, and on what did he suppose such rights to be founded in the absence of compliance on his own and his ancestors' part, with the conditions for residence and improvement contained in the original grant of the seignory? And did he not give some other reason besides poverty for not enforcing his said supposed rights? and if so, what reason or reasons? Declare very particularly and carefully the truth as to these matters.

Seventh. Did Louis Gaspard de Repentigny, the father of the said Camille, ever converse with you on the subject of the seignory of the
487 Sault Ste Marie and his supposed rights thereto? If so, state what he said particularly as to the reasons for which he and his father, respectively, did not reside there or improve the same, and the date at which residence thereby one and which of them had been discontinued, and the respective periods, places, and manners in which he and his said father, the Chevalier Louis le Gardeur, respectively, had been employed since the said date, and whether they, or either, and which of them had at any time thrown off his allegiance to France; and if so, when, and how, and whether they, or either and which of them, had ever by deed during his life, by will or otherwise howsoever, alienated his interest in the said seigniory? What idea rights did he, the said Louis Gaspard, express to you as to his supposed
488 to the said seignory, and on what did he suppose such rights to be founded, in the absence of compliance on his own and his father's part, with the conditions for residence and improvement contained in the original

grant of the seignory, and did he not give some other reasons besides poverty for not enforcing his said supposed rights? and if so, what reason or reasons? Declare very particularly and carefully the truth as to these matters.

Ninth. Relate also all that you have heard the widow of the said Antoine Camille say as to the matters enquired after by the above 5th cross-interrogatory.

Eleventh. Relate also all that you have heard the mother of the
489 said Antoine Camille say as to the matters enquired after by the above 5th cross-interrogatory.

Eighteenth. Relate all that you know or believe concerning the place where the deed referred to is or ought to be at present.

Lastly. Do you know, or can you set forth, any other matter or thing which may in anywise tend to the benefit of the said respondents? If so, set forth the same, and all the circumstances and particulars thereof, according to the best of your knowledge, remembrance, and belief, with your reasons at large.

The foregoing interrogatories are hereby settled by mutual consent, subject, however, to objections, as will be the testimony taken under
490 them, on the ground of incompetency or irrelevancy.

Detroit, September 6th, 1862.

(Signed) J. M. HOWARD, *Sol. for Petitioners.*
(Signed) ALFRED RUSSELL, *U. S. Dist. Att'y.*

Translation of the depositions of witnesses taken by virtue of the
491 commission issued on this cause on the 6th of September, 1862, to Messrs. Gautier Lamott, Hazard Roux, Loustaunan, and Ph. Guerin, returned, attached to said commission.

Deposition of Mr. Le Comte du Fayel, taken October 28th, 1862.

To the 1st direct interrogatory, he says: My name is Rene Ernest Nestor Compte du Fayel; I am 42 years old, and reside in my chateau de la Flechais, commune de Guer, arrondissement de Ploermel (Morbihan.)

To the second: I do not personally know any of the female petitioners. I never saw or spoke to them; but their grandmother having married my uncle, I have been able to obtain information respecting the De Re-
492 pentigny family, and I am in possession of facts which enable to establish the genealogy of said ladies.

To the third: I never knew the mother of the said De Repentigny ladies, but I learn from my uncle and my aunt, who were her father-in-law and mother-in-law, that she was called Aimee Gautheaume, and that she married Antoine Camille de Repentigny in April, 1814; that at first, for a year, she lived with the mother of her said husband, Madeline Marguerite le Prevost du Quesnel, widow of Louis Gaspard de Repentigny, and then wife of my uncle, M. Le Comte de Marchais. She lived upon the plantation of Changy, quartier de la Capesterre, island of Guadeloupe; afterwards Antoine Camille de
493 Repentigny bought a farm at Petit Bourg, where the family ever since has resided. I was my uncle who handed to Camille the money necessary to pay for his farm. I get these very precise details from my uncle and my aunt.

To the fourth: The widow of A. C. de Repentigny always lived at Petit Bourg since the death of her first husband. In second marriage she became the wife of Mignard, a surgeon. This marriage provoked against her the mother of her first husband, who ceased all relations with her. I afterwards learned that she became the wife of Mr. Monpezat.

To the fifth: I never knew Antoine Camille de Repentigny, as he died the

year of my birth, but I knew from his mother that he was born at
494 Tours; that during the revolution he was getting his education in England; that he returned to Guadeloupe, and lived there until his death, which happened in 1820. At that time he lived upon a farm at Petit Bourg.

To the sixth: I never could have known Louis Gaspard de Repentigny.

To the seventh: Although I did not know him, his widow gave me all the details respecting him, his father and his family, as Gaspard de Repentigny himself could have given me. 1st. His father was Louis le Gardeur Chevalier de Repentigny; his mother, Mad'lle Chaussegros de Lery; they were born and married in Canada, and never had any children except the
495 said Gaspard. 2d. Louis de Repentigny served with distinction in Canada. I don't know what was his rank in that colony; I know, however, that it was quite high. The military post he held was Sault Ste Mary, which I have often heard spoken of. 3d. The widow of Gaspard told me that the governor of Canada had granted to her father-in-law, Louis le Gardeur de Repentigny, and to the Chevalier de Bonne, an immense tract of land between Lakes Superior and Huron; that this concession took its name from a fall called the Sault Ste Marie; that this concession was ratified by King Louis the 15th; that he there built a strong house (maison forte;) he made clearings and occupied himself with the culture of Indian corn (mais ou ble de Turquie,) and the raising of cattle. This cultivation of maize struck me the more, as I thought it impossible in the region of the
496 lakes on account of the rigor of the climate; I know that M. de Repentigny conducted himself with a remarkable valor during the war between France and England in a high post, the name of which I do not know. On leaving Canada he went, I know not whether directly, to St. Domingo. He continued in the service of France. In 1780 he was, I believe, commandant in the regiment of Guadeloupe; it was then that he concluded the marriage of his son, Louis Gaspard Le Gardeur de Repentigny, with Madeleine Marguerite Pauline le Provost du Quesnel. He afterwards went to France. Then the king appointed him governor of Senegal, and he died on his return into France, at Paris, in 1786, and was buried in the parish of St. Eustache. My aunt, who was acquainted with her father-in-law
497 during *during* seven years before his death, (lorsqu' il est mort,) gave me all these details, which she had received from him and from her husband.

To the eighth and ninth: I can say nothing upon the 8th and 9th questions.

To the tenth: I learn from my aunt, that she had three children from her marriage with Louis Gaspard de Repentigny, to wit: Louis le Gardeur de Repentigny, born at Guadeloupe about the year 1781–1782, who died on the same island in 1820; Theodore le Gardeur de Repentigny, who died at Guadeloupe in 1811; and the third, Antoine Camille le Gardeur de Repentigny, born at Tours, died at Guadeloupe, in 1820; he is the only one who left any heirs, who are the female petitioners.

498 To the eleventh: I well knew Madeline Marguerite Pauline le Provost du Quesnel, widow of Gaspard de Repentigny. I knew her with her second husband, my uncle, M. le Compte de Marchais, at the chateau de Courtavenel, commune de Vandoy, canton de Rozoy, arrondissement of Coulomiers, (Seine and Marne,) where I was residing. I saw her for the first time in November, 1826, when I was six years old, and she died in my arms the 18th of May, 1836; I therefore knew her during nine years. All which I have said in answer to the 7th question was communicated to me by her. I knew of no intercourse between the female petitioners and their mother with my aunt, which was broken off by the second marriage of her

daughter-in-law. She ever took the greatest interest in her grand-
499 daughters, the female petitioners, who inherited from her. My aunt had resolved to have me marry one of them; her death alone, I believe, prevented the accomplishment of this project. I have heard her regret not having near her one of the daughters of her son Camille.

To the twelfth: On the 18th of May, 1814, Mad'e Gaspard le Gardeur de Repentigny married Arsene Rene Comte de Marchais, my uncle. She resided for several years upon her farm or plantation Changy, at Capesterre, Guadeloupe, with her husband, and also her son Camille and the wife of this last, during a year; after which Camille and his wife retired to Petit Bourg, still preserving with their mother and mother-in-law the best relations, until her departure for France.

500 To the thirteenth: The marriage of the Count de Marchais and the widow of Gaspard de Repentigny was celebrated at Basseterre, island of Guadeloupe, the 18th of May, 1814. My uncle and my aunt lived at Guadeloupe about six years; they afterwards came to live in France, in their chateau of Changy, afterwards Chartrelle, and lastly Courtavenel, where my aunt died in my presence, the 18th of May, 1836; her husband, whom I did not leave after the death of his wife, died in my arms the 18th of February, of this year, 1862.

To the fourteenth: I never could have been a witness of the relation between my aunt and her children; but I know that she regarded them as the legitimate children of her son, Camille le Gardeur de Repentigny, and that under this title they inherited from her, and in her conversations re-
501 specting the family of her husband, the following genealogy is the result of what she said, a genealogy easy to be proved in any tribunal of France: Louis le Gardeur de Repentigny, the person taking the concession, husband of a Demoiselle Chaussegros de Lery, from whom was born Gaspard le Gardeur de Repentigny, an only son, the husband of Madeline Marguerite Pauline le Provost du Quesnel, who married, as her second husband, the Counte de Marchais, my uncle. Of the marriage of Gaspard de Repentigny and Madeleine du Quesnel were issue: Louis le Gardeur de Repentigny, lieutenant colonel, who died without children; Theodore le Gardeur de Repentigny, who died without children; and Camille de Repentigny, the father of the three female petitioners. It was thus my aunt
502 considered her family, and thus that my uncle, who occupied himself with the affair of the Sault, treated the female petitioners.

To the twenty-third: I have nothing further to say, except that it was sure and certain that the legal heirs of the Chevalier Louis de Repentigny are the female petitioners, that they are the sole persons having right to the concession which was made to the said Louis de Repentigny, father of Gaspard, grandfather of Camille, and great-grandfather of Louise de Repentigny, Lizette Antoinette de Repentigny, widow of Bonfilz, and Josephine Lucrece de Repentigny, widow of Clavie.

(Signed) C'TE DU FAYEL.

To the cross-interrogatories, he says:

503 To the first: I have known the nature and the object of the cause now pending since 1835. I never personally saw or knew any one of the female petitioners, except by reputation from my aunt, their grandmother. I am not directly interested in the success of the female petitioners, but it is right that I should declare that I am a creditor of the estate (succession) of their grandmother, my aunt by marriage, for sixty-two thousand and some hundred francs, and I ——— much upon the success of this affair to obtain the payment of that sum; nevertheless, it is easy to be convinced of the loyalty of my declarations, which are dictated by my conscience and the truth.

To the fifth and seventh: I have nothing to say as to the fifth and
504 seventh questions, Gaspard and Camille de Repentigny having died before I was born.

To the ninth: I never knew the widow of Camille de Repentigny.

To the eleventh: The widow of Gaspard de Repentigny became my aunt by her marriage with my uncle, the late Count de Marchais. I knew her in 1826, and she literally died in my arms on the 18th day of May, 1836. I resided near her and her husband at the chateau de Courtavenel, commune de Vandoy (Seine and Marne.) She often spoke to me about the rights of her first husband and her grandchildren to the property of the Sault Ste Marie. It was often the subject of our conversations during the long
505 winter evenings. I gave the more attention to all that was said on the subject as, my imagination being exalted by reading Cooper's novels, I dreamed of nothing higher than the life of a pioneer in the virgin forests of the United States. Knowing that I was to be the heir of my uncle, I pressed him to purchase out the rights of the children of his wife in order that I might go and act the colonist in the region of the lakes. She talked to me about the concession made to her father-in-law, of the residence he had made there, of the labors he had undertaken, the clearings he had made, and the cultures he had essayed. She had learnt all this from his own mouth. She said, also, that the war of independence and that of France with England, and afterwards (puis) the revolution had rendered it
506 impossible for her husband successfully to assert his rights. From the closing years of the last century up to his death De Repentigny had constantly been taking measures in the United States to sell his property, but he was counselled to wait until population should progress th way, in order to draw from it a greater advantage. I have seen letters, know not where, which corroborate all these statements. It was not un the cession of Canada to England that the Sault ceased to be resided up Never at any period did the Repentignys renounce their rights (titre) Frenchmen. The chevalier died with the title of "governor of Senegal" for France. Gaspard died in active service as capitaine de port at Pointe a Pitre, under the first empire. They never alienated their rights to
507 the Sault. The chevalier left his fortune intact to Gaspard, who died without making a will. I know all this from my aunt and my uncle, who was acquainted with all the affairs of his wife. Camille, like his father and mother, should have (a du) considered his rights as well founded; these last regarded the conditions of the colonization as fulfilled since an establishment had been founded, and that if this establishment did not continue to prosper there had existed superior force (il y avait, un force majeure.) In fine, the Repentignys, not rich, sought rather to sell than to colonize, and as the female petitioners remained a long time minors their interests were managed in a deplorable manner. I derive all these details from my
508 aunt and my uncle, and from what I have seen myself, having found myself mixed up in the affairs of this family as much as if it had been my own.

18th: All the papers relative to this affair are in the ministry of the marine and the colonies. I know they have been found there in gr

Finally: I have forgotten to say that my uncle, wishing to rights of his wife's children, had endeavored through the mediu Lafayette, his neighbor, to sell a part of the concession to a (Astor,) of New York, but the condition of the minority of the ladies not permitting them to alienate their property, the thing
509 could not take place.

Read to M. le Count du Fayel the answers made by him, as well to the first direct interrogatories as to the cross-interrogatories, and written en-

tirely by the hand of Hazard Roux, one of us, he declared that he persisted in them and had nothing to add to them, and signed, in our presence, at the end of his answers to the said direct interrogatories, as well as hereunder, requiring (requenant.) Tax de f77.30.

(Signed) C'TE DU FAYEL.

Thus sworn and deposed before us, delegated commissioners, at Paris, the said day, 28th of October, 1862.

(Signed) HAZARD ROUX.
(Signed) LOUSTAUNAN.
(Signed) GAUTHIER LAMOTTE.
(Signed) PH. GUERIN.

510 *Deposition of C. E. Violet, taken and sworn to October 31st, 1862.*

To the first interrogatory he says: My name is Charles Etienne Violet. I am 53 years old, and reside in Paris, rue Lamartine, No. 9. I have exercised the functions of a huissier at Guadeloupe, and am at present a rentier.

To the second: I am acquainted with the three female petitioners, who are Louise Pauline de Repentigny, Lizette Antoinette de Repentigny, widow of Pierre Murville Bonfils, and Josephine Lucrece de Repentigny, widow of Cyprian Clavie, all three born at Guadeloupe and residing there now. I knew them all in the commune of Petit Bourg, Guadeloupe, since the year 1836.

511 To the third: I also knew the mother of those ladies when she was the widow of the Sieur Mignard, her second husband. I was in Guadeloupe when she married for her third husband Pierre Monpezat. She was a Demoiselle Gantheaume. I knew her at the same time I knew her daughters, for all lived together on the same property at Petit Bourg, except Josephine Lucrece, who, after having married Cyprian Clavie, went with him upon a plantation called Durivage, situate in the commune of St. Anne. Her mother died in that commune of Petit Bourg in 1850. I was still in Guadeloupe.

To the fourth: All the acts import, and I know it positively, that
512 the mother of those three ladies was born Marie Antoinette Nicole Aimee Gantheaume. For her first husband she married Antoine Camille de Repentigny. I know from a sure source that for a short time they lived at Capesterre, Guadeloupe, and that afterwards they went and established themselves in the commune of Petit Bourg, where Camille died. She afterwards had two other husbands; first, the Sieur Mignard, whom I never knew, and who was a health officer; second, the Sieur Monpezat, who himself had quitted the commune du Canal, where he was a manager, (gezeur,) and went to fix himself at Petit Bourg.

513 To the fifth: I repeat, I never knew Antoine Camille de Repentigny, but I always heard it said that he lived upon the Changy plantation, at Capesterre, when he married Miss Gantheaume. Soon after they went to reside at Petit Bourg, where they died. Camille, according to what I always heard said, had what is called in the colonies the profession of propritory inhabitant, (*habitant proprietaire.*)

To the sixth: I never knew Gaspard de Repentigny, who, according to official papers which I have had in my possession, died *capitaine de port* at Guadeloupe, the 2d of July, 1808, and who had married Madeline Pauline Marguerite le Prevost du Quesnel, who became the wife of the Count de Marchais.

514 To the seventh: I have already answered that I never knew Louis Gaspard de Repentigny, but I can answer to all the clauses you have read, as well from what I have heard said by members of the family, partic-

ularly by the widow of Camille, as from their old acquaintances and from official documents which I have had in my possession. The father of Louis Gaspard was the Chevalier de Repentigny, who was born in Canada, and died in France in 1786, on his return from Senegal. The mother of the said Louis Gaspard was a Demoiselle Chaussegros de Lery, born also in Canada; married in Canada. They never had any other child but the said Louis Gaspard. The father was in the service of France, captain of a company
515 in divers places; first in Canada, at the Sault Ste Marie; afterwards at Martinique, at Guadeloupe, and even in France, and lastly at Senegal. Even before the concession of the Sault Ste Marie the Chevalier Louis de Repentigny was sent there in the quality of commandant. It was shortly after this that the concession took place. After its ratification the government, in some dispatches, confirmed not only the taking of possession by the grantee, (titulaire,) but also his prolonged residence at the place, as well as the cultivation of the lands—the object of the concession. He died in Paris, 1786, on his return from Senegal. I can affirm that the Chevalier Louis never had any other child but Gaspard. As I never knew either the
516 father or the son, I cannot recall any of their conversations.

To the eighth: Never having known the said Camille, I can say nothing concerning him.

No the ninth: After I became acquainted with the widow Camille, born Gantheaume, mother of said female petitioners, I always heard her say that she and her children had a claim to make upon the government of the U. S. for the lands conceded to one of their ancestors.

To the tenth: Gaspard de Repentigny married Mad'elle le Provost du Quesnel, by whom he had three children—Louis and Theodore, both
517 deceased at Guadeloupe, the first in 1820, the second in 1811, without either of them having been married; the third, Camille, who died also at Petit Bourg.

To the eleventh: I never knew the mother of Camille, the Countess de Marchais.

To the twelfth and thirteenth: Madame Gaspard, after her husband's death, married M. le Cte. de Marchais, at Guadeloupe, where they resided some time; afterwards they came to France. They lived in the chateau de Courtavenel, arrondissement de Coulommiers, commune de Vandoy, (Seine and Marne.) Mad'e Gaspard died there May 18th, 1836, and de Marchais himself died at his chateau de la Flechais, near Guer (Morlihan,)
518 the 18th of last February.

To the fourteenth: Never having seen or known Made. Gaspard, I never could have been a witness to conversations between her, her daughter-in-law, or her three granddaughters; but I affirm that Mde. Camille often repeated to me that her three daughters were the sole and only legitimate heirs of the Chevalier Louis de Repentigny. Those three ladies themselves, in the frequent conversations I have had with them, never varied as to the good foundation of their rights to the inheritance of Louis Chevalier de Repentigny, their ancestor, and of whom they were the sole legitimate descendants.

519 To the fifteenth: I lived at Guadeloupe from the 26th of July, 1831, to some time in the year 1856. I left for that colony in quality of private secretary of the procureur, General Bernard. After remaining attached to his office in that quality for three years, I established myself at Pointe a Pitre, where I was appointed sworn sheriff, (huissier assermente,) in the tribunal of that town. As I have already said, I knew very intimately, during my stay in that colony, the Demoiselles Louise Pauline, Josephine Lucrece, and Lizette Antoinette de Repentigny, as also their mother, the widow Camille, but never Madame Gaspard. I never did any official business either for

them or their mother or their grandmother. It was not until the oc-
520 casion of the reclamation of the rights which they claimed to have under the Chevalier Louis de Repentigny to the concession of the Sault Ste Marie, that I was charged with the power of attorney (procuration) of those ladies.

To the sixteenth: It would be impossible for me precisely to fix the day, for I was not present in the office of Mr. Thionville, the notary, situate at Point a Pitre, (Guadeloupe,) with Made. Camille and her three daughters, her sons-in-law, Monpezat, the third husband of the mother, and the old people of the country, who came to attest the contents of the "acte de notoriete" drawn up by that notary. That act was read over by Mr. Thionville, in presence of the whole company and Mr. Johannetan, his colleague.
521 The signers having declared that the persisted in the facts therein related since they were of their own perfect knowledge, it was signed by the said appearers and the notaries. All this was afterwards affirmed to me. Though I cannot name all the signers, I can at least cite—1st. Le Baron de Bonneuil, of Petit Bourg, neighbor of these ladies; 2d. Le Chevalier de Bragelougne, the mayor of the commune of Morne a l'Eau; 3d. Le General Faujas de St. Fonds, ancient mayor of the commune of Petit Canal; 4th. Mr. de Ponteves d'Amirat, proprietor at Baie Mahant; 5th. Mr. Boubers de Vojeanlieu, proprietor at Lamentin; 6th. Mr. d'Estrelan, proprietor at Baie Mahant. It was not until several days after the execution of this acte that it was handed to me by said Thionville, the notary of those ladies.

522 To the seventeenth: Bearing this act, and also the power of attorney of those ladies, received through the said notary, I left in 1842 for Washington, where I arrived towards the end of March of the same year. I had already made a first voyage to Washington in the first days of October, 1840. My object in starting for Washington was to continue the claims (reclamations) of those ladies for the Sault Ste Marie. It was on my first voyage that for the first time I made the acquaintance of Mr. Matthew St. Clair Clarke, who afterwards, but after my departure, was clerk of the House of Representatives.

To the eighteenth: It was in the last days of December, 1840, on my first journey to the U. States, that Mr. Matthew St. Clair Clarke confided
523 to me all the papers, of which he was the bearer, relating to the claim of the Sault Ste Marie. He confided them to me to examine them, and to draw up the petition of the said female petitioners. The petition being drawn up, I returned those papers to Mr. Matthew St. Clair Clarke. I can affirm that there were among the said papers some actes which appeared to me then to be perfectly regular, (en regle,) but of which I cannot fix the dates, importing a sale by the son of De Bonne to James Caldwell, of Albany, of the moiety of the said seignory of the Sault Ste Marie, and by the said Caldwell to Arthur Noble, an English subject, who left his part of the said seignory to his nephew, John Slacke, to whose rights his widow, Agnes Slacke, who herself recently died in England, found herself the suc-
524 cessor in consequence of his death.

To the nineteenth, twentieth, twenty-first, and twenty-second: Although possessing some knowledge of French laws and usages, yet not having exercised in France any public or ministerial functions, I beg the honorable commissioners who interrogate me to excuse me from answering the nineteenth, twentieth, twenty-first, and twenty-second questions, which have been read to me, each one of the members being by his special knowledge, and the nature of his ancient functions as ministerial officers, more able than I to inform the court of the district of the U. States of America upon all and each one of the points indicated in said direct questions
525 of the interrogation on the part of the claimants in the cause.

To the twenty-third: I have nothing to add to the answers which I have given upon the said interrogatory.

(Signed) C. E. VIOLET.

To the cross-interrogatories, Mr. Violet says, to the first: I know the nature and object of the suit now pending. I am acquainted with the three female petitioners, but I have never seen or known Guy Rotton. I am no blood relation, nor related by marriage, in any degree, to any one of the parties. In 1840, 1841, 1842 I was employed by the female petitioners as their agent (mandataire) to present their claim to the Congress of the United
526 States, and to sustain it. Our agreements were that if I should cause their rights to be recognized, they should give me a commission upon the lands recovered. I exercised their power of attorney during 1840, 1841, and 1842; then I gave it up, and since then I have no longer exercised it. A portion of my expenses, and the expenses of my journeys, has been paid me. I have only a very indirect interest, for I have only to claim of the female petitioners the payment of my expenses and the commission which was promised me, and which is still (toujours) due to me.

To the fifth: I have already declared that I never knew Antoine Camille de Repentigny, consequently I can say nothing about this. I never
527 heard it said or pretended by anybody that either the Chevalier or Camille had ever alieniated or renounced, in whole or in part, their rights to the seignory of the Sault Ste Marie. All the information and documents of which I have spoken establish the contrary. The Chevalier Louis, and Gaspard, his son, died in the service of their country. It is certain and positive that they never abandoned their fidelity to France, and that they did not quit Canada until after its cession by France to England, having taken care to conform themselves to the laws promulgated by the latter country in what concern the registration of their titles of nobility and those respecting the seignory which they then possessed, and which their heirs claim now of the government of the Union as being their prop-
528 erty. The proofs of residence, cultivation, and improvement exist in numbers great enough to prove that they have fulfilled all the conditions which were imposed upon them, and that after being the undisputed masters of it, nothing could deprive them of it, especially after the cession of Canada and the recognition of their titles of property by England. For myself, my personal impression respecting the motives of the silence of Camille, are the following: In the first place, the wars between France and England, the great difficulty of the communications between the French colonies and North America, his precarious position, and, in fine, the difficulty of finding an agent purposing (decide) to undertake a journey into a coun-
529 try then almost unknown. It may be added with no less truth, and will be proved by the letters found amongst the papers of Count de Marchais, and transmitted to the present agent of those ladies, that towards the end of the 18th century the chevalier and his son thought of and still occupied themselves about this land; and it is not less true that Camille occupied himself also about it, counting upon the diligence of agents who never caused one step to be taken in this business, (qui n'ont j'amais fait faire un pas a cette affaire)

To the seventh: I never was acquainted with Louis Gaspard, nor his son Camille, who both died at Guadeloupe before my arrival in that island. It results from authentic papers that the Chevalier Louis was still in Canada in 1765, and that he there peaceably enjoyed his own part of the con-
530 cession; he cannot, therefore, be regarded as absent from the country, because by the terms of the treaty of cession his rights and property were recognized by England, whether he served that country or refused to take the oath of fidelity to it, which was the case. The other employ-

ments which they fulfilled up to their death are proof of this. In answering the fifth question of the cross-interrogatory I have answered the last paragraph of this seventh question.

To the ninth: The widow of Antoine Camille has repeated to me very often that their rights were incontestable, that if she were a man she would leave at once in order to have them recognized, and that in presence of all the papers and documents on hand the U. States would not certainly refuse
531 this recognition.

To the eleventh: I never knew the mother of said Camille, and, consequently, cannot speak of this.

To the eighteenth: I cannot state exactly where the documents now are, but I affirm that those which I held from the Repentigny heirs, and those which I procured at Quebec and the Sault Ste Marie, were delivered by me to Clavie the 19th of April, 1844. As to those which were confided to me by Matthew St. Clair Clarke, I gave them back to him before my departure from the United States.

Lastly: I have nothing to add to the particulars contained in the
532 preceding answers. I think I have spoken with sufficient detail and very sincerely all which my memory furnishes me of the "souvenirs" in this matter.

After reading, &c., &c., (as at the end of Du Fayel's deposition,)

(Signed) C. E. VIOLET.

(Jurat and signatures as at the end of Du Fayel's deposition.)

533 *Deposition of Madame du Petit Thouars, taken November 18th, 1862, before the same commissioners.*

The witness, after having taken the oath, to the first direct interrogatory says: My name is Marie Camille Aimee; born (nee) De Cambefort; wife of M. le Vice-Admiral Abel Aubert du Petit Thouars, with whom I live in Paris, rue Castellane, No. 10; and I am 61 years old.

To the second: I never knew the three female petitioners you have named to me; but I have often heard them spoken of by the Count de Marchais and by the widow Gaspard de Repentigny, their grandmother, who became the wife of the last-named gentleman at Guadeloupe.

534 To the third: My answer is the same in what concerns the mother of those three ladies.

To the fourth: I know perfectly well that the mother of the three female petitioners was a Demoiselle Gantheaume, that after becoming the widow of Camille de Repentigny she married two other husbands, but I do not know their names nor at what period.

To the fifth: I knew the first husband of the said Demoiselle Gantheaume at Changy, commune de la Capesterre, (Guadeloupe,) while with his mother the widow of Gaspard de Repentigny.

To the sixth: I never knew Louis Gaspard, father of the said Camille.

535 To the seventh: Having never known him I could not have any conversation with him upon any of the questions contained in this seventh interrogatory.

To the eighth and ninth: I have nothing to say upon the 8th question and nothing upon the 9th.

To the tenth: I learned from M'me de Marchais that besides Camille she had two other sons, Louis and Theodore, who died long since; that Theodore was never married, but I cannot affirm that such was the case with Louis, although I believe I have heard it so said.

To the eleventh: I have already told you that I knew the mother of Camille at Guadeloupe during about ten years.

536 To the twelfth: The widow of Gaspard married the Count de Marchais at Guadeloupe, where I knew them both, but I cannot exactly state the time of their marriage. The count and she after their marriage lived at Guadeloupe, upon the Changy plantation, and came and settled in France long before I did; first at the chateau de Chartrelle, afterwards at Courtavenel, where M'me de Marchais died; M. de Marchais then went and settled at La Flechais, commune de Guer, (Morbihan,) where he died in the month of February last.

To the twenty-third: I have nothing to add to the foregoing depositions.

(Signed) A. DU PETIT THOUARS.

537 To the cross-interrogatories she says:

To the first: I know the nature and object of the cause pending before the district court of the United States upon the demand of the Repentigny ladies. As I have already told you, I do not personally know any of those ladies. I am not in any manner directly or indirectly interested in the success of those ladies.

To the fifth, seventh, ninth, eleventh, and eighteenth: I can answer nothing to the 5th, 7th, 9th, 11th, and 18th questions.

Lastly: I can add nothing to what I have told you in answer to the cross-interrogatories. After reading, &c., &c., as certified to the foregoing depositions,

(Signed) A. DU PETIT THOUARS.

(Jurat dated November 18th, 1862, and signature of the commissioners as above.)

538 *Deposition of Monsieur le Comte de Bouille, taken before the same commissioners, December 2d*, 1862.

After taking the prescribed oath, to the first direct interrogatory he says: My name is Jules Francois Amour Comte de Bouille; I was born at Lamentin, Martinique, March 16th, 1800. I am a delegate from Guadeloupe, a member of the consultative committee of the colonies, chevalier of the legion of honor, and reside in Paris, No. 3 avenue Matignon.

To the second: I am perfectly acquainted with those three ladies, who live in Guadeloupe, commune de Petit Bourg, where I resided during the stay I made in that colony from 1837 to 1849.

539 To the third: I was equally well acquainted at the same place and time with their mother, born Gantheaume and deceased in the commune of Petit Bourg in 1850.

To the fourth: After the death of her first husband Mad. Camille de Repentigny married the Sieur Mignard, a health officer; having lost him, she married as her third husband the Sieur Monpezat, previously a sugar plantation manager, who also died some years ago at Petit Bourg. Her second and third husbands always lived with her at Petit Bourg.

To the fifth: I never had occasion to see Camille de Repentigny, who died in 1820 at Guadeloupe, where, as I have stated, I did not settle until 1837. He was a proprietor at Petit Bourg.

540 To the sixth: I could not have known Gaspard de Repentigny, his father, who the year of my birth, with his wife and children, quitted Martinique, whither he had emigrated, to return to Guadeloupe, where he died in 1808.

To the seventh: For the reasons given in the preceding questions I could have no conversations with him respecting his ancestors, his family, and his business; but I always heard it said that he was the only son of Mr. Louis de Repentigny, who having served in the French forces in Canada and

obtained from the king a concession of land in that country, was afterwards appointed governor of Senegal, and died while on furlough in France.

To the eighth: In answering to the fifth question I have implicitly answered to the eighth which you have put to me.

541 To the ninth: Although very well acquainted with Mad'e Camille de Repentigny and her three daughters, who were my country neighbours and whom I often met, I never had any relations with them; there could not therefore be any conversation between her and me respecting their affairs. I remember having proceeded in 1840 or 1841, as mayor of the commune of Petit Bourg, to the civil marriage of one of her daughters with Mr. Clavie.

To the tenth: I know that Camille de Repentigny had only two brothers, who both died at Guadeloupe in 1811 and 1820 without issue, and that his three daughters are now the sole grandchildren of Gaspard de Repentigny.

To the eleventh: In a former journey of some weeks, which I made to Guadeloupe at the end of 1814, I once saw at Basseterre Madam
542 Gaspard de Repentigny and Monsieur de Marchais, whom she had married some months before. I afterwards learned that they quitted Guadeloupe and settled in France, where they died, she in 1836, he at the commencement of the present year. Thus I was never able to see Madam Gaspard de Repentigny in presence of her daughter-in-law and her granddaughters, nor to converse with her concerning the interests of these last in Canada.

To the twelfth, thirteenth, and fourteenth: Respecting the 12th, 13th, and 14th questions you have read me, I have nothing further to say except what I have already declared in answer to the 9th and 11th.

To the twenty-third: I add that the three daughters, issue of the
543 marriage of Camille de Repentigny with Mademoiselle Gantheaume, are in my view the legitimate great-granddaughters of Mr. Louis de Repentigny.

(Signed) J. DE BOUILLE.

To the cross-interrogatories he says, to the first: I am aware that it concerns a claim made by the female petitioners for the recovery [qu'il s'agit de la revendication] of the rights of Louis le Gardeur de Repentigny, their great-grandfather, to the lands which had been granted to him in Canada by the king of France. I know those three ladies, having often met them in the commune of Petit Bourg, Guadeloupe, where I myself resided from 1837 to 1849. I am not in any way directly or indirectly interested in the business in question.

544 To the fifth: I never had occasion to see Camille de Repentigny, who had been long dead, at Petit Bourg, when I went on my return, (qui etait depuis long temps decede borsque je suis alle a mon retour,) to the colony to live, that commune, where he had but a small property which could never have yielded him but a small revenue.

To the seventh: I was born at Martinique the same year of the departure of Gaspard de Repentigny from that colony, whither he had emigrated in 1794 on his return to Guadeloupe, where I know he died in 1808, being captain of the port at Pointe a Pitre. I could not therefore have known him.

To the ninth: At Petit Bourg I often saw Madame Camille de Repentigny, but I never had any conversation with her touching her interests in
545 Canada.

To the eleventh: I never but once saw Madam Gaspard de Repentigny, which was in 1814, at Basseterre, Guadaloupe, with De Marchais, whom she had married some months before. I was then very young, [14

years;] it is therefore not surprising that she did not speak to me of her affairs in Canada.

To the eighteenth: I do not know where the papers relating to this business may be found, but I would observe that all the civil acts establishing the filiation of the Repentignys should be lodged in the archives of the ministry of the marine and the colonies, and I add that it is impossible to bring into doubt the authenticity of these actes or to deny the exac-
546 titude or the existence of the facts which are there contained. I cannot know the reasons why Louis de Repentigny and his descendants did not always reside in Canada, nor those which could have embarrassed the improvement and cultivation of the conceded lands. I know that Louis de Repentigny was in the service of France, and governor of Senegal when he died. I have often heard it said that he had as an only son Gaspard, the father of Camille, who had only two brothers, who both died without issue, at Guadeloupe, in 1811 and 1820. I furthermore testify that Madame Camille, as well as her three daughters, were, when I knew them in Gaudeloupe, in a position with small means, and which afterwards became more precarious still, in consequence of the abolition of
547 slavery. I think, therefore, that it is to the really unfortunate situation of the Repentigny ladies, who, in my view, are the legitimate great-granddaughters of Louis de Repentigny, that is to be attributed the delay they have suffered in the assertion of their rights.

Finally. I declare finally that it is not within my knowledge that Louis and Gaspard ever, at any period, renounced their fidelity to France, nor alienated, by testament or otherwise, the lands conceded in Canada. After reading, &c., &c., (same certificate as above.)

(Signed) J. DE BOUILLE.

(Jurat and signatures as above.)

548 *Deposition of Rose Antoinette de Jorna, widow of the Count Francois de Bouille, taken before the same commissioners, December* 2, 1862.

After taking the prescribed oath, to the first, she says: My name is Rose Antoinette de Jorna, widow of Count Francois de Bouille; I am 83 years old; I was born at Lamentin, Martinique, and reside at Paris, avenue de Matignon, No. 3.

To the second: I have often seen the female petitioners above named, who are Louise Pauline de Repentigny, Lizette Antoinette de Repentigny, widow of Pierre Murville Bonfilz, and Josephine Lucrece de Repentigny, widow of Cyprien Clavie, all three at present still residing in the commune of
549 Petit Bourg, Guadeloupe. By reputation, I knew those three ladies from 1837, the period of my arrival at Guadeloupe, up to 1849, the period of my departure from that colony for France.

To the third: I knew the mother of those ladies from her infancy, at Martinique, whither she had emigrated with her parents, Mr. and M'de Gantheaume, in 1794, and I again saw her as the widow of Camille de Repentigny, whom she had married some years after her return to Guadeloupe; I saw her again, in that same colony, from 1837 to 1849; I learned in a positive manner that she died at Guadeloupe, after my departure from that country to return to France.

550 To the fourth: After having been the widow of Camille de Repentigny she married the Sieur Mignard, a health officer, and afterwards Mr. Monpezat, whom I knew by reputation, and who, as well as her two former husbands, died at Petit Bourg, Guadeloupe.

To the fifth: I knew Camille de Repentigny, while he was yet a child, at Fort Royal, Martinique, with his parents, who emigrated in 1794; I did not

see him again, because he died before the period at which I went to establish myself at Guadeloupe.

To the sixth: I was also perfectly acquainted with Louis Gaspard de Repentigny, father of the said Camille, at Martinique, at the period of
551 the said emigration; he afterwards returned to Guadeloupe, where he died at Pointe a Pitre, in the service of France, in the royal marine, performing the functions of post captain.

To the seventh: I often had occasion to converse with Louis Gaspard, who I know was born in Canada, but I never saw the Chevelier Louis de Repentigny, his father; I was too young to have been acquainted with him. I remember very well that in the conversations which took place at that period, in my presence, between Gaspard de Repentigny and my parents, he often spoke to them of the concession of lands which the king had made to Louis de Repentigny, his father, in Canada. I never saw the Chevalier de Repentigny; I was too young to have been acquainted with him.

552 To the eighth: Camille having returned very young to Guadeloupe, and having died there before the period of my establishment in that colony, I never could have conversed with him respecting his affairs.

To the ninth: I never had occasion to converse with Madame Camille on her affairs.

To the tenth: I know that Gaspard de Repentigny had as children besides Camille, Louis and Theodore, who both died at Guadeloupe without having ever been married.

To the eleventh: I was acquainted with Madame Gaspard de Repentigny at the said time with her husband in the emigration from 1794 to 1800. I heard her repeat what her husband had said, that they had lands in Canada, arising from a concession made to their father.

553 I have already said that I only knew Mr. and M'de Gaspard de Repentigny and their children, as well as the Gantheaume family at Martinique, and during the emigration which lasted from 1794 to 1800; that the marriage of Camille with Mademoiselle Gantheaume could have take place only at Guadeloupe, where I did not establish myself until 1837; consequently a long time after the death of Camille, and the departure of his mother for France.

To the twelfth and thirteenth: After the death of her husband Mad'e Gaspard married the Count de Marchais at Guadeloupe; they lived their for some time and then came and settled in France. I know she died there, but I cannot say positively in what place. The Count de Marchais died
554 also a short time ago, but I know not in what place.

To the fourteenth: I could not have heard any conversation between Madame Gaspard and her daughter-in-law, as I knew them only at Martinique, and as the marriage of the latter did not take place until their return to Guadeloupe, where, as I have already remarked, Mad'e Gaspard de Repentigny was no longer residing when I went there to stay in 1837.

To the twenty-third: I have to add that to me it is certain and incontestable that the three female petitioners are truly the legitimate descendants of Chevalier Louis de Repentigny, their great grandfather.

(Signed) JORNA DE BOUILLE.

555 To the cross-interrogatory, M'de de Bouille says:

To the first: I understand and fully appreciate the end and object of the cause now pending. I know the three female petitioners, for I have often seen them. They were my nearest neighbours in the commune of Petit Bourg, Guadeloupe. I am in no manner whatever interested in the success of the affair, and I am not in any degree related by blood or affinity to the female petitioners.

To the fifth: For my answer to this question I refer to the one I have made to the 2nd question of the direct interrogatory.

To the seventh: I can only repeat what I have said to the 7th direct interrogatory, namely, that Mr. and M'de Gaspard de Repentigny, in
556 their frequent conversations with my relatives, parents, and acquaintances, spoke frequently of the rights they had to the lands that had been conceded to their father by the king in Canada. I am entirely ignorant of the existence of any testament made by any one of them; I never heard it spoken of.

To the ninth: I have nothing to answer to this question, as I did not know Camille except while he was still a child.

To the eleventh: I can only repeat to you what I have said in my answer to the seventh interrogatory, and my deposition is applicable only to what was said and repeated to my relatives, parents, and acquaintances, in my presence, by Louis Gaspard, and by his wife.

Lastly: I have nothing to add to my foregoing several answers, in which I persist. After reading, &c., (same certificate as above.)

(Signed) JORNA DE BOUILLE.

(Jurat and signatures as above.)

557 *Deposition of Francois Jules Arnould Fabre, advocate, aged 54 years, residing at Paris, Rue Rodier, No. 47.*

After taking the prescribed oath he says: I was sworn as an avocat in the royal court of Paris the 13th of July, 1835, and it is before that court that I have practiced since then either the profession of an avocat or that of an avoue.

To the nineteenth: 1st. Yes; one of the ministries into which is divided the central administration or government of France bears the name of "Ministere de la Marine and des Colonies." 2d. In this department (ministere) are preserved all the administrative acts, papers, and documents relative to the service of the marine, whether in France or in the colonies, or in any other part of the world, and those relating to the military, ad-
558 ministrative, and judicial services in the colonies. In this department exist a seal or stamp, (timbre,) which is impressed upon copies (expeditions) and extracts of papers which are delivered to parties interested, after having been verified and certified. 3d. The dossier of a person is the collection of acts, papers, and documents concerning the services of that person.

In what concern the ancient colonies, which have ceased to belong to France, the dossiers are not always individual.

The functionaries or agents of the government having addressed to the department of the marine at the time of the events which drew upon France the loss of these colonies, all the registers, pieces, or papers, public
559 or even private, which they were able to save, these divers documents were classified, and as a very great number of them interested not only a sole individual but entire families, these family dossiers were necessarily made. All the dossiers are preserved by the government in the interest of those whom they concern, to serve in the establishment of their rights.

They do not constitute public documents in the sense that everybody may demand the communication of them, but in the sense only that every interested party may obtain from the department, by showing legitimate motive, authority to consult them, and have delivered to him expeditions, copies, or extracts.

4th. The dossiers in question referred to in the preceding answers are kept and preserved in the department (ministere de la marine and des
560 colonies.)

To the twentieth: By the terms of the royal declaration of 9th April, 1736, which only confirmed in this regard the former legislation, and particularly the royal ordinances of August, 1539, of May, 1579, and April, 1667, the registers in which the cures were required to inscribe the baptism, marriages, and burials, before the law of 20th of September, 1792, entrusted to the municipal officers the duty of drawing up the actes de l'etat civil (ordinary administration) were reputed authentic and constituted complete proof in court of justice.

By virtue of the new laws they preserve the same character and the same authority.

For the rest it is a fixed principle of French law that the acts contained in the registers of the civil state, (etat civil,) ancient and modern, are
561 to be believed until false statements are found to be inscribed in *in* them, at least as to the facts which passed before the officer of the civil state, heretofore the cure, and the reality of which was certified by him. As to the facts for which he is obliged to refer himself to the declarations of the appearers, (comparants,) some authors think the registers are equally entitled to credit until a false entry has been proved, (jusqu a inscription de faux;) but others, on the contrary, maintain that these facts may always be disproved by every species of proof, even by testimonial proof, (la preuve testimoniale.)

Extracts from the registers when clothed with the legal formalities take the place of the register itself, and have credit for their perfect conformity to it. Consequently they have the same proving force.

562 In order that these extracts may be used as a proof in courts, it is necessary they should have been delivered by the depository of the register and certified correct, (conforme.) Consequently, if the transaction relate to acts received in France, whether by the cures before 1792, or by the maires since that epoch, the maire or the greffier of the civil tribunal delivers the extract, and his signature is legalized by the president of the civil tribunal of first instance.

If it relate to acts received in the colonies, the extract is delivered by the minister of the marine and of the colonies.

When the extract is to be made use of in a foreign country, the signature of the president should be legalized by the minister of justice, and that of the minister of justice by the minister of foreign affairs. When the
563 extract is delivered by the minister of the marine and the colonies, his signature is also legalized by the minister of foreign affairs.

To the twenty-first: The act of notoriety has for its object the proving (constatation) of a fact. In certain cases determined by the law itself, it has the force of legal proof; in others, on the contrary, it is but a simple piece of information which may be combatted or destroyed by any other document of a nature to demonstrate its falsity or inexactitude. Then the act has no more authority than the confidence with which it may inspire the judge, arising from the circumstances to which it relates, and the number and respectability of the witnesses. In other words, it has only a purely
564 moral authority.

The law does not submit these acts to any special form: they are received both by the judges de paix and by the notaries, and they are not subjected to the control or approbation (homologation) of the judicial authority.

To the twenty-second: Acts of notoriety, whereof the law has not prescribed the forms, may be delivered en brevet; that is to say, without any minute thereof remaining in the hands of the notary.

If a minute thereof has been made, this minute cannot be withdrawn, (retiree,) but the copy thereof which has been delivered and certified "con-

forme" by the notary depository, proves its own perfect conformity with the minute; its value, therefore, as proof of the facts attested must be the same as that of the minute itself, no more, no less.

565 If the copy is delivered by a notary of France, it must be legalized by the president of the tribunal, by the minister of justice, and by the minister of foreign affairs, to enable it to be used before a foreign tribunal. If it be delivered by a notary of a French colony, it must be legalized by the president of the tribunal, by the procureur general of the imperial court within the jurisdiction, (ressort,) of which this tribunal is situated, by the governor of the colony, by the minister of the marine and the colonies, and by the minister of foreign affairs.

Having read to M. Fabre the answers by him above given to the 19th, 20th, 21st, and 22nd of the direct interrogatories, and written out wholly by the hand of M. Hazard Roux, one of us, he declared that he persisted

566 therein, and had nothing to add thereto, and signed hereunder in our presence.

(Signed) FABRE.

Thus sworn and deposed before us, authorized commissioners, at Paris, the said 29th day of January, 1863.

(Signed) LOUSTANAN.
" GAUTIER LAMOTTE.
" PH. GUERIN.
" HAZARD ROUX.

We, the authorized commissioners, certify by these presents that the preceding depositions of 1st, M. Le Comte du Fayel; 2d, M. Violet; 3d, Madame du Petit Thomars; 4th, M. Le Comte de Bouille; 5th, Madame La Comtesse de Bouille; 6th, and M. Fabre, were written by M. Hazard Roux, one of us; that they were all separately read to each one of these

567 six witnesses before being signed in our presence, the oath as mentioned in the commission, and as it appears at the head of the present proces verbal, having been preliminarily proposed to each one of them, and taken by him.

GAUTIER LAMOTTE. [L. S.]
A. LOUSTANAN. [L. S.]
HAZARD ROUX. [L S.]
PH. GUERIN. [L. S.]

Paris, February 10th, 1863.

(Signed) HAZARD ROUX.
" GAUTIER LAMOTTE.
" P. GUERIN.
" LAUSTANAN.

571 MONTREAL (NO. 1) DEPOSITIONS.—(Filed 20th May, 1863)

Direct interrogatories on the part of the petitioners.

572 First interrogatory. What is your name, your age, your residence, and your vocation? And if you answer that you are by profession or vocation a lawyer, state how long and where you have practised it, and whether you are a person learned in the French laws and usages of Canada, and what have been your opportunities to become acquainted with such French laws and usages.

Second interrogatory. Are you acquainted with any one of the above-named petitioners, and which of them, and how long have you been acquainted with them or any of them?

Third interrogatory. Were you ever acquainted with one Pierre Amable de Bonne, now deceased, formerly a judge of the court of king's bench, Montreal, Canada? State and set forth whatever knowledge you may have derived respecting him, either from your acquaintance with him or from information derived from deceased members of his family, 1st. Touching his descent and parentage; 2d. Touching his residence and vocation or occupation; 3d. Touching his pecuniary means, whether he was rich or poor; 4th. Touching any interest he may have claimed in an old fief or seignory, commonly known as the Sault St. Marie, in the present State of Michi-
573 gan; 5th. The time and place of his death.

Fourth interrogatory. If you have answered that said Pierre Amable de Bonne was the son of Louis de Bonne, a captain reforme in the regiment of conde infanterie and a nephew of the ancient governor De la Jonquiere, governor of New France, please set forth any knowledge you may have derived from deceased members of his family, or any other authentic source, (mentioning the source,) touching the domicile or place of residence of said Pierre Amable, on the twelfth of July, A. D. 1796, 1st. Touching the military or other public services of said Captain de Bonne; 2d. Touching the time and place of his death; 3d. Touching the property, real or personal, which he left at his death, and the probable value thereof at the time and during the lifetime of said Pierre Amable de Bonne.

Fifth interrogatory. Did you ever know a man by the name of James Caldwell? If so, where did he reside and what was his occupation, and have you any knowledge of his having visited said Pierre Amable de Bonne, at Montreal or elsewhere in Canada, and of any transaction between them for the sale or transfer of a fief or seignory at said Sault Ste Marie, or any interest therein by said Pierre Amable to said James Caldwell?

574 Sixth interrogatory. (To William Badgley, of Montreal, particularly.) Look upon the paper writing now shown you, marked upon the margin, in red ink, Doc. XX, purporting to be a copy of a deed made before Charles Stewart, a notary public, at Quebec, to James Caldwell, bearing date the twelfth day of July, A. D. 1796, of a fief or seignory at the Sault Ste Marie, and state 1st. Where you first saw said document and how you came by it. 2d. Whether you ever saw the original, and when and where. 3d. Whether the signature "P. A. De Bonne" to said original was the genuine signature of said Pierre Amable de Bonne, and is said copy a true copy of the original? 4th. And if you have answered that you found the original in the office of a notary public at Quebec, please state whether or not, by the laws of Canada, any private person is at liberty to remove said original from said office, and what at that time was the legal mode of transferring the title of lands under the French law of Canada, in contradistinction to the English law. If by a notarial act, please explain the process; state what is done with the instrument and by whom the notary public is appointed.

Seventh interrogatary. (To said William Badgley, particularly.) State what effect, by the law of Canada as it existed at the date of said
575 deed, the said deed had, supposing the land it mentions had been situate in Canada, and whether or not it would have operated to transfer an interest in the land.

Eighth interrogatory. (To said William Badgley particularly, and to any other witness who may have knowledge in the premises.) Set forth what you know touching the payment and satisfaction of the sum of one thousand five hundred and seventy-seven pounds, two shillings and three pence, (£1,577 2*s.* 3*d.*) sterling money mentioned in said deed; the 2d instalment thereof of £563 11*s.* 1½*d.* due on 1st Oct., 1796; 3d do. of £788 11*s.* 1½*d.* due on 1st Oct., 1797. And if you have in your reach or control any written

documents showing or conducing to show the payment of said two last-mentioned sums, please produce them and annex them to your deposition, describing their place of deposit and stating their character for genuineness according to your best knowledge.

Ninth interrogatory. (To William Badgley particularly, or to any other witness learned in the laws of Canada as they existed at the date of said deed.) Please set forth what effect, by the then laws of Canada, had the clause of said deed, beginning with the words "to and for which payments," and ending with the words "said P. Amable did and doth hereby accept," upon the land conveyed, in regard to holding the same as security
576 for such payment; and in regard to creating a personal debt against the transferee, he not being personally present at the transaction, and whether by the laws of Canada there arises from lapse of time, a presumption of payment or a limitation of the time within which the party giving the deed may resort to a legal remedy to enforce payment. And if there be any such presumption or limitation, within what period does it accrue?

Tenth interrogatory. (To said William Badgley or any other person that may be called as a witness.) Are you acquainted with the handwriting of said James Caldwell and of Arthur Noble? Look upon the paper writing now shown to you, marked on the back, in red ink, "Doc. XXI*a*," purporting to be an agreement between Arthur Noble and James Caldwell, bearing date the first day of June, A. D. 1798, and state when you first saw said document, in whose possession, and how you obtained possessiom thereof; whether the signatures thereto, "James Caldwell" and "Arthur Noble," are genuine.

Eleventh interrogatory. (To the same.) Look upon the paper writing now shown to you, marked on the back, in red ink, "Doc. XXI," and on which are endorsed the words "copy of my deed given A. Noble for St. Marie," purporting to be a copy of a quitclaim deed of the undivided half of the fief or seignory called St. Marie or Sault St. Marie, and dated July 18th, 1798, and state whether the same was ever in the possession of you, the
577 said William Badgley, and when and how you obtained possession thereof. State, if you are able, in whose handwriting is the body of said document, and in whose handwriting is the said endorsement. State also, if you are able, in whose handwriting is the endorsement on said document marked "XXI*a*," comprising the following words, viz: "Arthur Noble & James Caldwell, agreement, inclosing a copy of a deed given him for St. Marie; a quitclaim only, the original deed being delivered Mr. Noble." Did you ever see the original of said quitclaim deed? State what searches and efforts you have made to find it, and with what success, and whether you believe the same to be lost.

Twelfth interrogatory. (To the same.) Under the laws and usages of Canada, ancient and modern, what is an "*acte de foi and hommage*," (an act of faith and homage,) and in what written form, if any, it should be evidenced, and in what department, bureau, or office of the provincial government should or may the written evidence of it be preserved?

Thirteenth interrogatory. (To the same.) Do you speak and understand the French language well, and have you perused the petition in this
578 case, and the French documents therein embodied, to wit, the concession and the brevet of ratification? If so, please explain the meaning and effect, according to the common law of England, of the expression *a la charge de porter foi et hommage*, and what, by such common law, would be the effect upon the title of failing to do the act implied by that expression? By the *coutume de Paris*, or the law and usage of Canada, would or would not a judgment or decree in a regular judicial proceeding, be ne-

cessary before the land would be considered "*reunie au domaine de la majeste,*" (reunited to his majesty's domain?)

Fourteenth interrogatory. Did you ever know Arthur Noble? If not, please state, from information derived from any of his deceased relatives, of what country he was a native, where he resided in America, and in what way he was related to John Slacke, and when and where said Arthur Noble died. Were you, during her lifetime, acquainted with Agnes Slacke? If so, state whose wife and widow she was; whether she had a son of the name of John Gray Slacke, who was the wife of said John Gray Slacke, and when did she die? Had said John Gray Slacke more than one sister who married a Rotton? If so, who were her sons and what the order and date of their births and deaths, if any of them have deceased.

579 Fifteenth interrogatory. Please set forth what knowledge you have if any, that Madame Agnes Slacke ever employed one John Sheriff, of New York City, or Mathew St. Clair Clarke, of the city of Washington, D. C., or both, to prosecute the present claim before the Congress of the United States, and give your reason, if any you have, for believing that the original of the above-mentioned quitclaim deed was ever in the possession of said Clarke. State particularly.

Sixteenth interrogatory. (To said William Badgley.) Look upon the copy of map now shown you, signed "Franquet," containing the words "certified to be a true copy of the map deposited in the archives of the government of Canada, in the house of assembly. Quebec, 29th August, 1861. (Signed) W. B. Lindsay;" and state whether you have seen the original of said copy, and where and what you know, historically or otherwise, of the official character and legal effect or value of said map, and whether the said copy is taken from the proper place of its custody, and is certified by the official person charged with its custody. Are there other maps of fiefs or seignories in Canada, made by the same person, (Franquet,) and are they regarded by the courts of Canada as legal and proper evidence of the boundaries and contents of the seignories they represent? In other words, are they there treated as muniments of title?

580 Seventeenth interrogatory. Have you any knowledge of a man of the name of Jean Baptist Cadotte, who, in the year 1762 and for many years afterwards, was a fur trader at the Sault St. Marie, had a trading post there, and was engaged in mercantile business as a partner with Alexander Henry, the celebrated traveller? If you have any such knowledge, state from what source you derive it, and state in what capacity and in whose employment said Jean Baptiste Cadotte originally went to the Sault St. Marie. State your knowledge, particularly of any facts relating to said Cadotte, and his settlement there, and any connection he may have had with the Chevalier de Repentigny.

Last or general interrogatory. Do you know any other matter or thing which, if disclosed, may conduce to the benefit or advantage of the petitioners in this case? If so, declare and set forth the same as fully and particularly as if thereunto specially interrogated.

The above direct interrogatories are settled by consent of the parties, subject to objection on the ground of competency or relevancy.

Oct. 16, 1862.

(Signed) J. M. HOWARD, *Sol. for Pet.*
(Signed) ALFRED RUSSELL, *U. S. Dist. Att'y.*

581 It is stipulated by the parties that Charles Paulet Rotton, one of the witnesses proposed to be examined under the commission hereto attached, on the part of the petitioners, shall not be required to answer any of the direct interrogatories except the 1st, 2d, 14th, 15th, and the last or

general interrogatory, and such cross-interrogatories as the counsel for the United States shall see fit to propound to him.

(Signed) J. M. HOWARD,
Sol. and of counsel for the petitioners.

13th Oct., 1862.

582 *Cross-interrogatories on the part of the respondents to be administered for the cross-examination of Charles Paulet Rotton.*

Fourteenth. Is or is not, to the best of your belief, Guy Rotton one of the petitioners in this matter, the son of John Rotton, the elder, and of Anna Maria Slacke? and what relation is the said Guy Rotton to you? At or about what time did Louisa Maria Slacke, the widow of John Gray Slacke, die? At or about what time did John Rotton, junior, the eldest son of the said John Rotton, the elder, and Anna Maria Slacke, die? Was or was not the said Guy Rotton the second son in order of birth of the said John Rotton, the elder, and Anna Maria Slacke, at the time of the decease of
583 the said Louisa Maria Slacke? How many relatives named John Rotton have you known or heard of? Distingush by stating what relation they were, respectively, to you and to each other, and what were the dates of their respective deaths as nearly as you can state?

(Signed) ALFRED RUSSELL,
U. S. District Att'y, Mich.

14th Oct., 1862.

The above cross-interrogatories to the witness, Rotton, are agreed to, subject to objection on the grounds of competency or relevancy.

(Signed) J. M. HOWARD, *Sol'r for Pet'rs.*

The petitioners hereby withdraw all interrogatories attached to the commission, issued to the Montreal commissioners, relating to the contents of a certain quitclaim deed from James Caldwell to Arthur Noble, and do not require that said interrogatories shall be answered; of course, the cross-interrogatories on the same subject need not be answered.

Detroit, April 7th, 1863.

(Signed) J. M. HOWARD, *Sol'r for Pet'rs.*

584 *Cross-interrogatories on the part of the respondents.*

First. Are you aware of the nature and object of the proceedings in this matter? and if so, how did you become acquainted with them? Are you connected with the petitioners or any and which of them? Are you interested in the success of the petitioners in any and what way, directly or indirectly, pecuniarily or otherwise? and if so, to what extent precisely? Have you been consulted or have you acted professionally on behalf of the petitioners, or as their counsel, retained or paid agent, or otherwise,
585 in any respect whatever, especially in procuring maps, documents, records, or any other, and what, portion of the petitioners' evidence in this matter or in suggesting or causing that the same be procured? Set forth particularly.

Third. At what date did you first become acquainted with Pierre Amable de Bonne? Was he or not by birth a French subject? If so, did he ever change his allegiance, on what occasion and at what date precisely? Did he or not to your knowledge or belief reside on, occupy, or cause to be occupied and cleared of forest the seignory of the Saut Ste Marie, or expend much money in the improvement of the same? If so, how much money, in what manner, and between what dates, and to what extent was the said seig-

nory cleared and improved in consequence? What was his career from the age of 21 years, to the best of your knowledge and belief, and especially how much of his time do you believe him altogether to have spent at the said seignory between the age of twenty-one years and his death, and on what grounds do you form such belief? Was he ever there to your knowledge? Was he ever there to the best of your belief? If so, how often, between what dates, and for how long on each occasion? What was the date of his being called to the bar? What was the gross and what the nett average
586 annual amount of the annual rents and profits actually received from the said seignory at the coming of age of the said De Bonne, also in the years 1781, 1796, and 1798, respectively? Is it or is it not, to the best of your belief, the fact that at all these periods there were, in truth, no annual rents and profits whatever accruing from the said seignory to the seigneurs thereof? and state the grounds of your belief. If there were annual rents and profits, distinguish the dates at which they were received.

Fourth. Was or was not Louis de Bonne, the father of the said P. A. De Bonne, by birth a French subject? Did he, to your knowledge or belief, ever change his allegiance? If so, on what occasion and at what precise date? What is, in Canada, the proper source of proof and the legal manner of proving the date of his death; and have you endeavored to obtain information as to the same from that source and in that or any other and what manner; and if so, with what result? State the exact date of his death, or as nearly as you can and to the best of your belief, with your reasons. Did he or not, to your knowledge or belief, reside on, occupy, and cause to be occupied and cleared of forest the seignory of Sault Ste Marie or expend
587 much money on the improvements of the same? and if so, how much money and in what manner and between what dates and to what extent was the said seignory cleared and improved in consequence? What was his career from A. D. 1751 to the date of his death, and especially how much of his time do you believe him altogether to have spent at the said seignory between the year 1751 and his death, and on what grounds do you form such belief? Was he ever there since 1752 to your knowledge or belief? If so, how often, between what dates, and for how long on each occasion? What was the gross and what the nett average annual amount of the annual rents and profits actually received out of the said seignory at the time of the death of the said Louis de Bonne? Reply particularly.

Fifth. Of what country was James Caldwell, in 1796, a citizen or subject, to the best of your belief? State your reasons. Was or was not said Pierre in and immediately previous to the execution of the deed of 1796 actually seized of the said seignory, and in what did such actual seizin consist? Was or was not said James Caldwell from and immediately after the execution of the same deed actually seized of the said seignory, and in what did such actual seizin consist? And do you or not believe him to have had any other than a naked right unaccompanied by the beneficial perception of
588 any annual profits?

Sixth. What search has been made for the original deed of the 12th May, 1796? Where do you suppose it to be now? Is it absolutely lost? and if not, why is it not produced? Have you compared the copy, marked Doc. XX, with the said original deed? and how and with whom was said comparison made? and is said Doc. XX the identical manuscript so compared? Who examined the original deed on that occasion? who read aloud? and was it the original deed or the said copy which was read aloud?

Seventh. Under the laws in force in Canada in 1796, or some of them, and especially having regard to the coutume de Paris and the terms of the brevet or patent of 1751, was or was not residence, occupation, beneficial perception of annual profits or seizin in some sense or other, and if so, in what,

sense essential to ownership and the legal transfer of land, especially of wild or wooded land? Was it or not essential to the ownership and legal transfer of a perpetual interest equivalent to an undivided moiety in fee simple?

589 Was it or not essential to the ownership and legal transfer of such an interest as you consider that the said P. A. De Bonne then possessed? Explain and define, in English, the estate or interest which you consider the said P. A. De Bonne to have had in the said lands immediately prior to the execution of said deed of 1796, and the estate or interest which the said Caldwell is considered by you to have had immediately after the execution of the same deed, and whether either estate or interest differed from that of Louis De Bonne, one of the original grantees. Explain and define, in the same way, the estate or interest which Noble had therein, in your opinion, immediately after the execution of the deed of 1798. Does or does not the deed of 1796 purport or attempt to pass, and also, in your opinion, actually and legally pass, so far as it is possible for such a deed to do, the lands themselves as well as such perpetual interest in the said lands? If not, why do you consider that it did not pass the lands themselves as well as such perpetual interest? What is the legal and technical reason? What constitutes the distinction between passing the lands themselves and passing such perpetual interest in lands? Explain how and why you consider it

590 possible to pass such perpetual interest, equivalent to an undivided moiety in fee simple in lands, without passing the lands themselves. Cite the authorities for your opinion to that effect. Translate and explain the 51st article of the Coutume de Paris against alienation, and its bearing upon this particular transaction of 1796, and upon the sale by Caldwell to Noble on 18th July, 1798, as both are stated in the said petition, and give fully the reasons for your views. Translate and explain section 3 of the royal arret of the 15th March, 1732, against the sale of wooded lands and its bearing upon the same transactions, and give fully the reasons for your views. State whether under the French law in Canada, and especially under the said arret of 1732, as regards seignory lands having timber standing on them, sale of all or any (aucunes) such lands was or was not expressly forbidden under the penalty of the contracts for sale being null and void, the restitution of the purchase-money, and the reunion of the said lands to the royal domain, and do or do not the words "lesquelles seront parcillement rumies de plein droit," near the end of the said royal arret, mean that all such wooded lands, so attempted to be sold, should stand reunited to the

591 royal domain in the same way as the lands mentioned in the preceding paragraph of the said arret; that is to say, by virtue of the said royal arret upon the attempt to sell them ipso facto, and without there being a necessity for any inferior arret in the nature of a special judicial decree or judgement for reunion? If not, what else is meant? Did or did not the said De Bonne's share of the said seignory, in 1796, consist, to the best of your belief, principally, if not altogether of such wooded lands? If not, to what extent do you believe it to have been cleared? Look also upon the printed copies of the royal arret of the 6th of July, 1711, (No. 1 of that date,) and also of the royal declaration of the 17th July, 1743, and state whether or not you consider the said declaration to have had the same or greater or less force as law than a royal arret. Whether or not the policy of both, as well as of the said royal arret of 1732, and their object was not uniform, so far as that they were all directed to enforce the improvements of land granted by the crown under penalty of reunion, and that the more effective enforcing of the said penalty of reunion was especially the object of the legislation which was latest in point of time. As to the royal declaration of the 17th July, 1743, and the 5th article thereof, translate the words "comme aussi toutes reunions qui ne seront pas pronounces par eux."

592 Does or does not, in your opinion, the word "reunions" mean decrees of reunion pronounced by a court of justice, as distinguished from reunions effected by operation of law, especially by the arret of 1732 ipso facto in the case of attempted sales of lands having timber standing on them? Has this 5th article ever been solemnly held by high judicial authority in any adjudged case to apply to reunions effected by operation of law, and especially by the said arret of 1732, as aforesaid? Has it been so held to repeal the above-mentioned provisions or to alter in any respect the policy of the said royal arret of 1732 to the effect that in cases when wooded lands were attempted to be sold such lands should ipso facto stand reunited to the royal domain without any judgment or special decree of a court of justice being necessary? If so, refer to the case. Did or did not the judges assembled at Quebec on the 4th Sept., 1855, under the provincial act, 18 Vic., cap. 3, entitled "An act for the abolition of feudal rights and tenures in Lower Canada," unanimously state in reply to question 16 that the said royal arrets of 6th July, 1711, and 15th March, 1732, as well as the declaration of 17th July, 1743, were in force at the time of the cession of the country by France to England? If not, how otherwise did they reply?

593 Eighth. Was the consideration of £1,577 2 3 ever paid to the said P. A. De Bonne to your own certain knowledge or value to that amount received by him? Was any larger or smaller sum to your knowledge or belief the real consideration? What is the amount of the money fine which would have become due to the superior domain on this transaction, supposing it to be subject only to the same laws which were in force on the 2nd Sept., 1783? If none, explain why you think that the right to the fines called "quints" did not accrue. If they did accrue, state at what rate of interest, and on what principles. Whether with or without rests, séptennial or otherwise, interest and compound interest are to be calculated. And assuming that no payment has ever been made on account of such fines, what was the legal effect of their non-payment upon the title, and by whom should the same have been paid? Calculate, and state the details of the calculation of how much is due altogether to the superior domain, and by whom on account of this sale (1796) to the present time.

Tenth. Supposing the laws in force on 2nd Sep., 1783, and none others to have been in force in 1798, and assuming that no payment has ever been made on account of fines, give a similar statement and a detailed calculation of the amount due altogether to the superior domain, and by

594 whom on account of this sale (1798) to the present time, and how much on each of the other conveyances stated in the petition.

Eleventh. What reason have you for supposing the manuscript marked Doc. XXI, and dated 18th July, 1798, to be a true copy, so far as it goes, of the original, and what reason have you for supposing that said original was duly executed?

Twelfth. Have you a record, or copy of a record, of a certain act of homage, purporting to have been rendered by the said P. A. De Bonne, on or about the 13th February, 1781, in respect of said seignory? Where should the record of the "aveu and denombrement" therein mentioned be now recorded? Have you searched there for them and with what result? Do they appear on record, or do you believe them to have been furnished within the time prescribed by law, and if so, what was the time so prescribed, and why do you so believe? What was the meaning and nature of such "aveu" and "denombrements?" should they not disclose the amount of the annual rents and profits of the seignory at the time, and does or does not the sentence "nous suspendons la dite foi et hommage" at the foot of the said

595 record mean in substance, "we suspend the benefit of this act of fealty and hommage?" If not, what else was suspended, and does

said suspension appear on record to have been removed, or do you believe it to have been removed, and if so, why do you so believe? And have you any and what reason for doubting it to be the fact that the ratification (1751) therein referred to was in fact never presented to the provincial authorities, because not exactly conformable with the original concession (1750) of said seignory, and as containing certain special conditions superadded by the king of France to those contained in the original concession (1750,) and that so the said suspension of benefit may never have been removed? And is it or not the case that an act of faith and homage rendered by one of two co-proprietors, such as the original grantees in this case could not enure to the benefit of the other co-proprietor, but only to that of him who rendered homage?

Define the nature of De Bonne's interest in the said seignory as against his co-proprietor at the time of the said homage, whether it was a joint tenancy or tenancy in common or in severalty, and have regard herein to the fact that it is described as fronting three leagues upon St. Mary's River. If in severalty, what legal instrument or proceeding in the nature of a parti-
596 tion was by the law necessary to set out such undivided shares in severalty, and whether or not such legal instrument or proceeding appears to have been perfected, and what evidence exists thereof? If in common, state all the particulars wherein such tenancy in common differed from the ordinary tenancy in common under the laws of England, and especially whether or not the other co-tenant was considered by the then law (1781) as seized per uni and per tout, and whether or not homage on the part of the other co-tenant was considered essential to perfect the title of the said P. A. De Bonne to his undivided share, whether or not homage was to the best of your belief ever at any time rendered by Louis De Bonne, James Caldwell, Arthur Noble, by any one named Slacke, Rotton, or De Repentigny, or by any one except the said P. A. De Bonne, in respect of said lands. If so, by whom and when?

Thirteenth. The first portion of this interrogatory and part of the second portion are excepted to for the reasons in margin. (The respondents except to this interrogatory—1st. Because there is no evidence of the witness's competency and knowledge of English common law. 2nd. Because the question is irrelevant, the common law of England not having been introduced into the country when the grant was made, and no act of the Canadian legislature can apply unless passed between 1763 and 1783.)

Explain the meaning and effect according to the laws in force in Canada in 1751, of the expression "a la charge de porter foi et hommage," and what by such law would be the effect upon the title of failing to do the act implied by that expression. How often and upon what occasion did such
597 acts of faith and homage become due? Was there any, and if so, what change in the law in any of these respects previous to the 3rd September, 1783?

What is the date of the most recent of the jugements or decrees reuniting a seignory in either of the Canadas to the royal domain? Have any such decree of reunion been pronounced since 1763? If so, refer to them; if not, what is the reason or what do you believe to have been the reason that such of decrees of reunion have not been pronounced?

Look upon the printed copies of the royal arrets of 6th July, 1711, [No. 1,] and 15th March, 1732, and of the royal declaration of the 17th July, 1743, respectively. Is it or not the fact that the Canadian courts of justice carefully and intentionally abstained for a long time, and for how long, previous to 1854, from exercising the judicial powers created by the said royal arrets and declaration? If so, for what reason have they so abstained according to the best of your belief, and was it or not the fact that, though judiciary

powers may not have been wanting, the machinery necessary to work the said arrets and declaration, so as to put them into effect had ceased to exist, and if so, from what time had they so ceased to exist? Have you
598 or not known any case or cases in which the British crown or the Canadian government having resumed possession of a seignory which has been abandoned and left uncleared and unimproved, contrary to the express conditions subsequent contained in the grant of such seignory; and having regranted portions thereof to new grantees, the original grantees or their representatives residing out of the jurisdiction, the said crown or government have afterwards recognised the claim of, and made compensation to the representatives of the original grantees, merely because of the said crown or government not having obtained a formal judicial decree in a proceeding for reunion? If so, state the names and dates of the cases. Are you quite certain that such formal judicial decree was in practice invariably considered necessary in such cases as the present? How do you conceive that it was possible for the respondents to obtain such judicial decree when the offices of governor or lieut. general and of intendant mentioned in the said arret of 1743 did not exist in the United States? Look upon the amended petition in this matter—is it or not your opinion that on the state of facts appearing or to be inferred therefrom, the said seignory, under the conditions subsequent contained in the said patent or bre-
599 vet of 1751, and also under the royal arrets of 1711 [No. 1] and 1732, and the royal declaration of 1743, or under some of them or otherwise has ever since or at certain periods since 1762 been in at least the condition of meriting reunion, [dans le cas d'etre reunie,] that is to say, reunited de jure or reunitable if not reunited de facto? If not, state at what periods, respectively, it has not been in the condition of meriting reunion, and distinguish the share of De Repentigny from that of De Bonne in your replies.

According to the said state of facts, is or is not the said seignory at the present moment apparently in the same condition of meriting reunion? And if not, state why not.

Translate and explain the following words in the 3rd article of the declaration of 1743: "Sans prejudice nean monis de la reunion laquelle pourra toujours etre poursinoie contre les premiers concessionaires."

From all you know or collect from other sources than the said amended petition, do you or not believe that the facts meriting reunion, that is to say, the facts of non-residence, non-occupation, non-clearing, and non-improvement, or some and which of them have existed in the case of this seignory ever since, or at certain periods since 1762, and exist at the present moment? If not, state at what periods, respectively, you do not believe them
600 to have existed, and why.

As regards the royal arrets of 1711 (No. 1) and 1732, and the declaration of 1743, respectively, was or was not the operative power by which reunion might be effected under each or all of them simply and solely the will of the crown? Look upon the printed copy of the royal arret of the 20th March, 1703, whereby the whole province of Acadia was reunited to the royal domain—was or was not the operative power whereby the said last-mentioned reunion was effected simply and solely the will of the crown? If not, state what constitutional or other effective or non-effective legal checks existed whereby the mere will of the crown in such matters could be controlled.

Look upon the printed copy of the commission of the Intendant Bigot, dated 1st January, 1848, and state whether or not he was the mere servant and deputy of the crown during the pleasure of the crown. If not, define his office and his tenure of office precisely. Define in the same way the office of the governor or lieutenant general.

Look upon the printed copy of the judgment of the 10th May, 1741, (edits et ordonnances II, 560,) especially the last paragraph but one, beginning with the words "En consequence avons declare," and state whether such judgment is or is not in fact a declaration of the will of the crown and subject to subsequent modification at the will of the crown. If not, explain the words "sous le bon plaiser de sa majeste," and state whether or not the jugement or decree supposed requisite to perfect the reunion de facto of the said seignory to the royal domain would or would not, in the event of the non-residence of the grantees on the seignory, or even within the jurisdiction, have been in a fact a mere formal declaration made at the instance of the crown, by officers holding at the pleasure of the crown, and whose duty it was at the same time to declare the will of the crown in the matter.

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State whether, to the best of your belief, any of the parties interested for the time being in the De Repentigny share of the said seignory of the Sault Ste Marie resided in Upper or Lower Canada between the years 1762 and 1784, and in the United States between the years 1783 and the present time, (1862.) If so, who, at what places, and between what dates?

State whether any of the parties interested for the time being in the De Bonne share of the said seignory resided in the United States between the years 1783 and 1862; if so, who has so resided, at what places, and between what dates, respectively?

602

What were, so far as you know or believe, the facts connected with and the date of the first dispossession of those through whom the petitioners claim to derive; and do you or not believe that in fact they were never dispossessed, wrongfully or otherwise, but simply of their own act, in or about the year 1762 at the latest, abandoned the lands mentioned in the grant and have never since resided on, occupied, cleared, improved, or enjoyed any annual profits from the said lands? If not, state why you do not so believe. Distinguish the share of De Repentigny from that of De Bonne in your replies.

Look upon the 113th article of the Coutume de Paris. Translate the words "Si aucuu a joui et possede heritage ou rente a juste titre et de bonne foi tant par lui que par ses predecesseurs dont il a le droit et cause franchement et sans inquietation par die ans entre presents et vingt ans entre absents, ages et non privilegies il acquiert prescription du dit heritage ou rente." Explain the bearing of this article upon the rights of the respondents according to the state of facts alleged in the amended petition and herein have regard to a passage in Bourgon's Droit Commun de la France et la Coutume de Paris, 1747, titre 22, cap. 2 and 3, beginning with the words "Ce droit est moins une voie d'acquerer," and ending with the words "affecte et hypotheque." Also have regard to a passage in Pothier's Traite de la Prescription, 1st part, cap. 3, Du juste Titre, beginning with the words "Ou appella Titre," and ending with the words "ou s'est empare sans titre." In what way, to the best of your knowledge and belief, did the respondents come into possession of the lands alleged to be comprised in the said seignory, and was there anything inequitable, unjust, or contrary to good faith in the manner in which they acquired such possession? If so, state what it was.

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Look upon the 118th article of the Coutume de Paris. Translate the words "Si aucun a joui use et possede un heritage ou rente par le space de trente ans continuellement tant par ui que par ses predecesseurs franchement publiquement et sans aucune inquietation, suppose qu 'il ne fasse apparoir de titre, il a acquis prescription entre ages et non privilegies." Explain the bearing of this article upon the rights of the respondents according to the state of facts alleged in the said amended petition.

Supposing the said seignory to be in Canada, state whether or not in your opinion as a Canadian lawyer, conversant with the rights of the crown in such cases, the crown would or would not, according to the state of facts alleged in said amended petition, have now acquired a prescription against
604 the petitioners under one or other or both of said 113th and 118th articles, and whether such prescription would or would not now be, in the courts of Canada, a good plea in bar on the part of the crown to the demand of the said petitioners. Supposing the same location, would or would not, according to what you know or believe of the facts of this case outside of said amended petition, the crown have now acquired such prescription constituting a good plea in bar in the same way?

Look upon the 4th article of the definitive treaty of peace concluded between France and England and dated 10th February, 1763. To the best of your belief and knowledge, did or did not the persons who at that date and for eighteen months afterwards represented the original grantees of the said seignory become British subjects or sell their estates to British subjects? and if so, within what period after the ratification of the said treaty did they so change their allegiance or sell their estates? If not, were or were not the said persons, and which of them, on or after the 11th August, 1764, aliens; and were or were not the persons who, according to the state of facts alleged in the said amended petition, next succeeded them in their alleged right to the said seignory, aliens? By the laws in force in Canada from 1763 to 1783, were or were not aliens incapable of devising and
605 taking by devise as well as of inheriting land?

Were they or not by the same laws incapable of holding land? Have regard herein, among others, to the cases of Donegani *vs.* Donegani, reported in Stewart's Reports, (Canada,) pp. 460–605, and the case of Pacquet *vs.* Gaspard, id., p. 143, and on the whole, to the best of your knowledge and belief as acquainted with the facts of the case, and to the best of your judgment as a Canadian lawyer, conversant with the rights of the crown, is it or not the case that in consequence of such alienage, either on the part of the persons alive in 1763 and 1764, or on the part of their immediate successors, the shares of the said De Repentigny or De Bonne in said seignory, or of both of them, escheated to the crown?

Fourteenth. Upon the state of facts alleged in the said amended petition and under the coutume de Paris, did any and what money fines under the name of "reliefs" or other names, become due to the superior domain on successions by inheritance or devise or on any other events besides the fines called "quints" upon sales? If so, state what were such fines called; upon what events did they accrue; what was the amount accruing upon each event; at what rate of interest and upon what principles;
606 whether with or without rests, septennial or otherwise, are interest and compound interest to be calculated. And, assuming that no payment has ever been made on account of such fines, calculate and state the details of the calculation of, how much is due altogether to the superior domain on account of such "reliefs" or other fines not being "quints;" and herein have regard, as to the De Repentigny share, that the descent is not stated to have been always in a direct line, but on the death of Theodore le Gardeur de Repentigny, on the 4th May, 1820, to have been collateral.

Fifteenth. Where do you believe the original quitclaim deed, dated 18th July, 1798, to be now? Where did you last see it or hear of its being, and when?

Sixteenth. Is the paper writing referred to as bearing the name of "Franquet," and purporting to be signed "W. B. Lindsay," a true copy in all respects of the original map, and what measures have you taken to satisfy yourself that it is so? Where is the said original map, and why is it not

produced? Does or does not the original map contain the right lines purporting to be the south and west boundaries of the said seignory? Are or are not the words "seigneurie de Messrs. de Bonne et Repentigny"
607 written within the said boundary lines on the original map? Are or are not the said right lines and words in ink similar to the rest of the original map, and apparently by the same hand and in the same style of execution, and to the best of your judgment placed upon the said original map at the same time and by the same hand as the rest of the said original map? Have you or not a distinct recollection, founded on careful examination, as to these points? Who was Franquet? Was the said original map prepared by legislature, government, or other authority? and if so, by what authority and for what purpose? Have you any reason to believe that the said original map was made from actual survey laid down by chain and scale? If so, what? If not, how otherwise and what authority or data? Have you any, and what reason to suppose Franquet to have had for locating the eastern extremity of the southern boundary line and the northern extremity of the western boundary line as located in said original map? And is there, to the best of your knowledge, any other and what authority excepting the said original map for locating the said points as in the said original map or otherwise? and if so, how otherwise?

Seventeenth. Distinguish carefully as to Jean Batiste Cadotte be-
608 tween that which you know of you own knowledge, and that which you know or believe from hearsay, or other sources than your own knowledge. How long is it since you first heard of any connection between him and Chevalier de Repentigny? on what occasion did you hear it; from whom and what led to the communication?

Lastly. Do you know, or can you set forth, any other matter or thing which may in anywise tend to the benefit of the said respondents? If so, set forth the same, and all the circumstances and particulars thereof, according to the best of your knowledge, remembrance, and belief, together with your reasons at large.

16th Oct., 1862.

(Signed) ALFRED RUSSELL,
U. S. District Attorney.

It is hereby stipulated that the respondents may add to the foregoing cross-interrogatories such others and in such form as they may be advised.

16th Oct., 1862.

(Signed) J. M. HOWARD, *Sol'r for Pet'rs.*

The foregoing cross-interrogatories are settled by consent of the parties subject to objections on the ground of competency or relevancy.

Oct. 16, '62.

(Signed) J. M. HOWARD, *Sol'r for Pet'rs.*
(Signed) ALFRED RUSSELL, *U. S. Dis. Att'y.*

609 *Additional cross-interrogatories on the part of the respondents.*

1. Refer to some authoritative work which gives the canons of descent, in case of intestacy as to real estate held under the coutume de Paris, and the laws of Canada prior to 1820, stating whether the mode in which such property was acquired, or the source from which it was derived by the intestate, changed or altered the rights of inheritance; and if so, how?

2. State the different descriptions of real property held under said coutume de Paris, as regulated by the manner in which the same was acquired, describing the different kinds, as regulated by the mode of acquisition, or

source from whence derived, and of what description of property the seignory claimed by petitioners would be, if held by the descendants of
610 the original grantees, whether propres or otherwise.

3. State the leading points of difference between the rules of descent under said custom of Paris, in Canada, and the rules of succession to ordinary real estate under the existing laws of France, so far as you are acquainted with the latter.

4. Supposing a case in which an intestate (Gaspard de Repentigny) died, leaving a widow, (nee Du Quesnel,) three sons, and no other issue, what shares of or interest in real property owned by him, such as is claimed by petitioners, would these, representatives, respectively, take under said custom of Paris, the said Gaspard having acquired the proper by inheritance from his father? Supposing that in 1811 the second son (Theodore) died without issue and intestate; in 1820 the third son (Camille) died intestate, but leaving a widow (nee Gautheaume) and three daughters, (the petitioners De Repentigny;) in 1821 the eldest son (Louis) died without issue and intestate, and leaving his mother (nee Du Quesnel) surviving, she having, in 1814 married a second husband (Comte de Marchais;) in 1836 said mother (nee Du Quesnel) died intestate, without issue of second marriage, leaving her second husband surviving, and largely in his debt; in
611 1862 said 2nd husband (Comte de Marchais) died devising all his interest to A B, a stranger—state how and to whom and in what portions, under Canadian law, such lands would have descended or been inherited. Supposing all the parties named to have been habiles a succeder, and capable of holding real property, did the mother (nee Du Quesnel) take any, and what, share or interest in respect of her first and second sons, whom she survived? Did such share or interest vest in her second husband, who survived her? Do the three daughters of Camille appear to be now the sole parties entitled to inherit the real estate of their grandfather (Gaspard) the widow (nee Gautheaume) being dead? Did A B acquire any right to said real estate under the coutume de Paris as against said three daughters of Camille? Would the fact that none of the parties above mentioned were ever in possession of the real property referred to, make any difference as to the rights of the respective parties? And supposing that all the parties above mentioned, as well as the father of Gaspard, were aliens, and the lands situated in Canada, and no heirs-at-law residing in Canada, or being British subjects, who would have inherited said land, or what would
612 have become of the same under the laws of Canada prior to 1820? would they or not have reverted to the crown? Explain, also, how the same would have descended according to the laws of France, so far as you are acquainted with the same.

5. State whether under the laws of Canada prior to 1820, and on the statement of facts as alleged in the amended petition, you are of the opinion that the petitioners fully represent the original grantees, distinguishing the alleged representatives of Louis le Gardeur de Repentigny and of Louis de Bonne, and also if under the fact as stated in said amended petition, and particularly the matters of pedigree alleged in the 4th page of said amended petition, Antoine Camille de Repentigny could have ever been seized of more than one half, if of any, of the alleged share of his father in said seignory; and if so, of what proportion, or whether he was, under the facts there stated, the sole heir-at-law of Louis le Gardeur de Repentigny, one of the original grantees, and whether or not there appears upon the face of said amended petition any cause or thing which would have incapacitated said Camille from inheriting or holding real estate then situate in Canada. And further, if under said laws, prior to 1796, seizin or
613 possession on the part of the person dying intestate, and claiming to

own real property in Canada was not necessary; and if so, what would be sufficient to enable him to transmit property to his legal heirs?

6. Referring to the 11th interrogatory of petitioners, state what effect the original quitclaim deed therein mentioned, if the same were in existence, would have had in transferring the property therein mentioned, and whether it must not have joined with it actual tradition, or delivery of the property therein mentioned to have rendered it effectual, and what was necessary to effect such tradition, and whether the mere execution of said quitclaim or of any deed of conveyance would have operated as a sufficient tradition or delivery as in law to have vested the property in the vendee.

7 Supposing the seignory claimed by petitioners to have always remained in Canada, and to have been deserted by the original grantees in 1762, or thereabouts, and occupied by any individual or individuals from 1783 to the present time, with or without title, and a suit were brought in the Canadian courts against the occupant or occupants to recover back the land by the original grantees, or their representatives, what grounds of defence to such claim could the occupant or occupants urge under
614 Canadian laws arising from the fact of occupation as aforesaid, against the original proprietors, or their representatives? Under these circumstances could the occupant or occupants under Canadian law be ejected from the lands?

8. Supposing the lands now claimed by petitioners to be still in Canada, and that the crown had become possessed of them in the same manner as the respondents have done, and had regranted them, what remedy would petitioners have, and in what way, and before what tribunal would their claim be brought forward, and upon what grounds determined?

615 Charles Paulet Rotton testifies as follows:

To the first direct interrogatory he says: I only know Guy Rotton, one of the petitioners. He is my brother, and I have known him from infancy.

To the fourteenth direct interrogatory he says: I did not know him personally. From information derived from his deceased relatives, connections, and members of my family, I know that he was a native of Ireland; that he resided for some years upon or near to some landed property in the State of New York, which he had purchased from the State, I have understood, which he called Fort Noble or Nobleborough. He was uncle of the said John Slacke mentioned in this interrogatory. His eldest sister, the wife of Benjamin Slacke, being the mother of said John Slacke. The said Arthur Noble died in Ireland in the year eighteen hundred and sixteen.

I knew the said Agnes Slacke during her lifetime. She was my maternal grandmother, and was the wife and widow of the said John Slacke, by whom she had one son, John Gray Slacke, late a captain in the British army, who died in the year one thousand eight hundred and forty-seven, and five daughters.
Louisa Maria, wife of said John Gray Slacke, died in the year one
616 thousand eight hundred and forty-eight. The said Agnes Slacke died in Jersey in the year one thousand eight hundred and sixty-one. Of the five sisters of the said John Gray Slacke, one only, my mother, Anna Maria Slacke, married a Rotton, my father, the said John Rotton, senior. Of this marriage there were issue eight sons, John, the first, born in the year one thousand eight hundred and twenty-three, who died at Malta in the year one thousand eight hundred and fifty-five; Guy, one of the petitioners in this case, the second in order of birth, born in the year one thousand eight hundred and twenty-four, still living; William, the third in said order, born in the year one thousand eight hundred and twenty-six or one thousand eight hundred and twenty-seven, still living; Frederick, the fourth in said order, born in the year one thousand eight hundred and twenty-eight,

died in Australia in the year one thousand eight hundred and fifty-three; myself, Charles Paulet, the fifth in said order, born in the year one thousand eight hundred and twenty-nine; Richard, the sixth in said order, born in the year one thousand eight hundred and thirty, died in his infancy;
617 Arthur, the seventh in said order, born in the year one thousand eight hundred and thirty-two, still living, and Henry, the eighth in said order, born in the year one thousand eight hundred and thirty-eight, still living.

To the fifteenth direct interrogatory he says: From information derived from my grandmother, Agnes Slacke, and my family connections, and from letters which I have seen, received by her from the said John Sheriff, of New York City, and from said Matthew St. Clair Clarke, of Washington City, in the United States of America, I know that both of those persons had been employed by my grandmother, Agnes Slacke, to prosecute the present claim before the Congress of the United States on her behalf, the said John Sheriff first, and after his death, the said Mathew St. Clair Clarke; and I am also aware from the same sources of information, and from the papers connected with the claim, that the said Mathew St. Clair Clarke was put in possession of the original and authentic documents necessary for its prosecution on her behalf, including the said quitclaim deed referred to in this interrogatory, which I have seen mentioned amongst those papers, and stated to be from James Caldwell to said Arthur Noble, under date the eighteenth day of July, one thousand seven hundred and ninety-eight, but I have no personal
618 knowledge of its existence.

To the last or general interrogatory he says: The signature, "Arthur Noble," subscribed to the paper writing now shown to me, and marked in red ink on the back thereof, "Doc. XXI*a*," purporting to be an agreement between said Arthur Noble and James Caldwell, is in the handwriting of said Arthur Noble. I have seen a similar subscription in the same handwriting and character signed to a family portrait in oils, belonging to my father's family of the said Arthur Noble, and which signature I understood and do believe had been written by himself; that handwriting and written character are similar to the said signature to the paper writing Doc. XXI*a*.

Being shown another paper writing, marked K, purporting to be a letter written by the said Arthur Noble to James Caldwell, dated at Fort Noble the thirteenth day of October, in the year one thousand seven hundred and ninety, I recognize the signature thereto, "Arthur Noble," to be of the same handwriting and character to the signatures above mentioned by me, only earlier in time.

(Signed) C. P. ROTTON.

Sworn and subscribed before me, at the city of Montreal, this seventh day of November, A. D. one thousand eight hundred and sixty-two, by the said Charles Paulet Rotton.

619 To the cross-interrogatory to the fourteenth direct interrogatory he says: The said Guy Rotton, one of the petitioners, is the son of my father, John Rotton, the elder, and my mother, Anna Maria Slacke. He is my brother. Louisa Maria Slacke, the widow of John Gray Slacke, died in the year one thousand eight hundred and forty eight. The said John Rotton, junior, the eldest son of the said John Rotton, the elder, and Anna Maria Slacke, died in the year one thousand eight hundred and fifty-five. The said Guy Rotton was the second son in order of birth of the said John Rotton, the elder, and Anna Maria Slacke, at the time of the decease of the said Louisa Maria Slacke. Of relatives of the name of John Rotton, whom I have known or heard of, I personally

know my eldest brother, deceased in the year one thousand eight hundred and fifty-five; my father, still living, and his father, my grandfather, who died in the year one thousand eight hundred and forty. I have heard that my grandfather was the son of his father John Rotton, my great-grandfather, who died in the year one thousand seven hundred and ninety-three, and who was the son of my great-great-grandfather of the same name, John Rotton, who died in the year one thousand seven hundred and twenty-four, and this last was the son of my great-great-great-grandfather of
620 the same name, John Rotton, who died in the year one thousand seven hundred and thirteen. I have heard of none others of that name.

(Signed) C. P. ROTTON.

Sworn and subscribed before me, at the city of Montreal, this seventh day of November, A. D. one thousand eight hundred and sixty-two.

(Signed) J. J. ABBOTT, *Comm'r.*

621 Pierre Louis Morin testifies as follows, viz:

To the first direct interrogatory he says: My name is Jean Louis Morin: my age years; my residence the city of Quebec; and my vocation is land surveyor and draftsman, in which capacities, and also as a topographer and geomatrician, I am presently, and have been for several years, employed under the commissioners appointed to carry into full effect the provisions of the provincial statute for the abolition of feudal and seignorial rights and tenure in the seignories of Canada.

To the second, third, fourth, fifth, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, and seventeenth direct interrogatories, respectively, the witness says: He knows nothing, and can depose nothing.

The sixth, seventh, and sixteenth direct interrogatories, being specially addressed to a particular witness, were not enquired of from this witness.

To the last or general interrogatory he says: Some years ago I was directed by the provincial government of Canada to proceed to France for the purpose *for the purpose* of searching amongst the historical and topographical records deposited among the governmental bureaux at Paris
622 whilst Canada was a French colony for such documents relating to the province as might be serviceable for its public uses. My mission detained me in France during the years one thousand eight hundred and fifty-two and one thousand eight hundred and fifty-three, in which time I examined a large collection of such documents, consisting of official reports and memoirs, plans, and maps of various kinds chiefly deposited in the department or bureau of the minister of war, and which had been prepared and drawn up in Canada from the foundation of Quebec until the year one thousand seven hundred and sixty, by officers in the colony, for the information of the French government, and transmitted to the king at Paris. Amongst these were many official plans and maps of Canadian localities, including maps of the seignories granted in the colony during the French occupancy of the country, showing the grants in continuous order on both banks of the river St. Lawrence for a considerable distance below Quebec, and extending above that city for a distance of one hundred and twenty miles, to the seignory of Borthier, inclusive, situated on the north bank, together with maps and plans of detached or connected seignories in other parts of the province, amongst which were maps of the seignory of Sault Ste Marie, the most distant and I believe of the latest granted
623 seignories of Canada, but now in Michigan, and also of a number of seignories located on the banks of the river Richelieu, flowing from Lake Champlain, from Fort Chambly, on that river, upwards to Lake Champlain, and also upon both shores of that lake; several of which latter are

now within the territory of the United States. I produce herewith, marked A A and B B, true copies of the original maps, deposited, as above mentioned, of the said seignory of Sault Ste Marie and of those upon the Richelieu River and Lake Champlain, made and copied by myself from the said originals so deposited, and which, with many other official maps or plans of Louisburg, Isle Royal, and Isle St. Jean, show French posts as well as of localities in Canada, were drawn and prepared by Franquet, a superior officer of engineers, "Ingenieur en chef de berre," in the French service of Louis the Fifteenth, and were transmitted by him to the king, accompanied by descriptive memoirs of the localities.

Franquet, as a superior French engineer officer, was ordered to America in the year one thousand seven hundred and fifty to inspect and report upon the chief posts and in Acadia and Canada. After some time passed in Acadia he came to Canada, where he remained from the year one thousand seven hundred and fifty-one to one thousand seven hundred and fifty-three,
624 during which time he was occupied with the duties of his mission respecting the posts and reporting upon them and the country about them, and he prepared a great number of said maps and of localities in Canada, amongst which were those of the seigniories of the Sault Ste Marie and upon the Richelieu and Champlain above mentioned, in both of which maps such posts will be seen to have existed at the time.

The original maps from which my said copies were made are not allowed to be removed from their place of deposit in the bureau of the minister of war. The copy now shown to me, certified by the late William B. Lindsay, esquire, clerk of the legislative assembly of Canada, is a copy of the map of the said seignory deposited in the archives of the government of Canada, which I copied for the use of the government from the original at Paris, and is identical with the copy "A A," which I now produce, copied by myself at Paris from the said original deposited there, and which is not allowed to be removed from its place of deposit.

The right lines, indicating the south and west boundaries of the said seigniory of Sault Ste Marie, drawn on the map, and the words "Mission de Ste Marie du Sault," "Seigniorie de Mrs. De Bonne et Repentigny," as shown in the said copies, were, to the best of my judgment, so drawn
625 and placed at the same time and by the same person.

I cannot say whether the original tracings were from actual survey, but from their general accuracy and their conformity with governmental and official maps of the locality, and which are considered authoritative, such as the admiralty charts of Lake Huron and St. Mary's River, marked A, now shown me; the original documents must have been made and prepared by Franquet from examination of the locality or from reliable official data collected in the topographical and engineers' department of the colonial government, to which his official mission would give him ready access.

With reference to the said map, moreover, I observe that nature having clearly indicated the front or northern and eastern boundaries as given in the original grant and its royal confirmation, both of which I have seen and examined, it was easy for such an engineer as Franquet to draw the right lines on the south and west to regulate and establish the boundaries of the Seignory by drawing a line from the north or front extending in depth almost parallel with the river which separates the two lakes. At the distance of six leagues it would make a right angle to the south line, and which would give to each side an extent equal to the extremity of the seignory.

This would be a "sauf revision," saving revision—as was always
626 done by the French colonial government, who never gave to the grantees any official plan of their grants, but simply declared the

grant of a certain named extent of land so to be taken at the place indicated in the title, and which the terms of the grant itself explained. To establish the south and west lines, the front and east lines being natural boundary lines and given by nature, I should calculate the existing sinuosities upon the superficies of the grant, and calculating the superficies of the different angles produced by the accidental formation of the land, it would be easy to establish the south and west boundary lines so as to give the seignory an exact superficies of thirty-six square leagues as given by the title and grant, and without subjecting myself to drawing south and west lines according to the sinuosities of the opposite sides. From the configuration of the ground the south and west lines would be about six leagues in length, because the irregularity of the sides takes away or gives more or less land to the figure shown on this map, and by making this difference my south and west lines would be at least six leagues each in length to give me my thirty-six square leagues, and this I established by a calculation made upon the scale shown on the map, and by which I also find that the
627 south line is exactly five leagues, the remaining league extending into Mud Lake, whilst the west line measures exactly six leagues according to that scale.

The exact proportion between the French league of Canada and the English mile is one league, equal to three miles four chains and fifteen and 34-100 feet, or one league is three miles two hundred and ninety-seven feet four 32-100 inches. Our French measure in Canada does not differ materially from that of Louisiana.

(Signed) P. L. MORIN.

Sworn and subscribed before me, at the city of Quebec, this fifth day of February, A. D. one thousand eight hundred and sixty-three.

(Signed) J. J. C. ABBOTT, *Comm'r.*

To the first cross-interrogatory he says: I know nothing of the nature or objects of the proceedings in this matter. I am not connected in any way with any of the petitioners, nor am I in any manner or way interested in their success, either directly, indirectly, pecuniarily, or otherwise.

To the second cross-interrogatory he says: No.

To the third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, and twelfth, thirteenth, fourteenth and fifteenth cross-interrogatories
628 respectively, the witness says: He knows nothing and can depose nothing.

To the sixteenth cross-interrogatory he says: The said paper writing is, in all respects, such true copy; I copied it myself from the said map deposited amongst the provincial archives at Quebec, and cannot be removed therefrom. The original map contains the said right lines, the south and west boundary of the said seignory, together with the words "Seigneurie de Mrs. Bonne et Repentigny" written within those right lines; both lines and words are in the ink similar to the rest of the map, and apparently by the same hand and in the same style of execution, and to the best of my judgment, were placed thereon at the same time and by the same hand as the rest of the map. I have a distinct recollection of this from careful examination of these points. Franquet was a superior of engineers in the service of the French king, Louis the Fifteenth. I do not know by what authority the said map was so prepared. Franquet, by his commission, was ordered to examine and inspect the posts in Canada and to report upon them to the king. A military post being established at the Sault Ste Marie, of which Captain De Repentigny, one
629 of the original grantees, was commandant, the position of the post

would be considered probably to be best shown in connection with the Seignory upon which it was located, whose river boundaries would naturally point out the importance of the post itself, which was placed at the portage on the river connecting Lakes Huron and Superior, and was intended to interrupt the Indian traffic proceeding from the Lake Superior, an object to which the colonial as well as the royal government attached much importance. Franquet's authority or data for locating the eastern extremity of the southern boundary line and the northern extremity of the western boundary line as located in the map, is not matter of supposition; he had the northerly or front and the eastern boundaries of the seignory as stated in the title of grant given to his hand by nature, and it required no science in an engineer to establish the southern and western boundaries to complete the square superficies of six leagues granted. It was not the map that authorized the location of the said points; it was the natural northern or front and eastern boundaries which necessarily caused the location of the said southern and northern points as shown on the map.

To the seventeenth cross-interrogatory the witness says that he knows nothing and can depose nothing.

To the last cross-interrogatory he says: I do not know nor can I
630 set forth any other matter or thing for the benefit of the said respondents than what I have already stated, set forth in my previous answers to the several direct interrogatories and to the several cross-interrogatories that have been submitted to me in virtue of the said commission in this cause.

To the first additional cross-interrogatory submitted to this witness he says: I know nothing and can depose nothing.

To the second additional cross-interrogatory submitted to him he says: I know nothing and can depose nothing.

To the third additional cross-interrogatory submitted to him he says: I know nothing and can depose nothing.

To the fourth additional cross-interrogatory submitted to him he says: I know nothing and can depose nothing.

To the fifth additional cross-interrogatory submitted to him he says: I know nothing and can depose nothing.

To the sixth additional cross-interrogatory submitted to him he says: I know nothing and can depose nothing.

To the seventh additional cross-interrogatory submitted to him he says: I know nothing and can depose nothing.

To the eighth additional cross-interrogatory submitted to him he says: I know nothing and can depose nothing.

(Signed) P. L. MORIN.

Sworn at Quebec, 5th Febr'y, 1863.

(Signed) J. J. C. ABBOTT, *Comm'r.*

631 Original Exhibits AA and BB above referred to sent forward for use of the Supreme Court under rule No. 8, [3.]

632 Joseph Bouchette testifies as follows, viz :

To the first direct interrogatory he says : My name is Joseph Bouchette; my age is sixty-two years; my residence the city of Quebec; my vocation deputy surveyor general for Canada, an office which I have held for many years.

To the second, third, fourth, fifth, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, and seventeenth direct interrogatories, respectively, the witness says : He knows nothing and can depose nothing.

The sixth, seventh, and sixteenth direct interrogatories being specially addressed to a particular witness were not inquired of from the witness.

To the last or general interrogatory he says: I have no knowledge of the map filed in this cause now shown to me, except that it purports and is duly certified by the late William B. Lindsay, esquire, clerk of the legislative assembly of Canada, to be a true copy of the map deposited in the archives of the government in the house of assembly. I have not seen the original. It exhibits on its face the river and peninsula what separates Lakes Superior and Huron, and also the Sault and Mission of Ste Marie du Sault and the boundaries of the seigniory, granted to Messieurs De
633 Bonne and De Repentigny by the French authorities in this colony in the year one thousand seven hundred and fifty, and ratified in one thousand seven hundred and fifty-one by the French king. The general accuracy with which the relative positions of the Lakes Superior and Huron and of the river St. Mary flowing out of the former into the latter and the islands thereon, as represented in it, shews the said Franquet, whose name is attached thereto, to have possessed a correct geographical knowledge of the country it exhibits, either from personal examination and surveys, or obtained from equally reliable information and data; the same remark would apply to another map of the said Franquet, of the Lake Champlain and the river Richelieu, now shewn to me and marked , produced in this case, shewing the position and extent of the seignories or French grants on either side of the said river and lake. Comparing the map of the seignory of Sault Ste Marie with the admiralty surveys of Lakes Superior and Huron in one thousand eight hundred and twenty-two, and the intervening river shown in Bayfield's map thereof, a true copy of a portion of which surveys is produced herewith, marked "A," and which copy was made under my supervision from the original survey, there appears between them a remarkable agreement in distances and bearings, especially of the river separating
634 those lakes from the outlet of Lake Superior at the Falls of Sainte Marie to the Detour channel, dividing Drummond Island from the mainland; Mud Lake in the former facing St. Joseph's Island, with Neebish Island intervening on the north, corresponding with the expansion of the river on Franquet's map opposite Isle St. Joseph with a smaller island (no name) in the latter, also a stream running into the bay or Mud Lake in both maps, whilst the distance between Mud Lake and the Falls of Sainte Mary, as the bird flies, is about eighteen miles and one third of a mile, and that to the Detour channel (light-house) twenty-four miles and two thirds of a mile; total in both forty-three statute miles, or fourteen leagues and one third, equal to thirty-seven and one third geographical miles—the astronomical bearings between the extreme points being north twenty-nine degrees west by Bayfield's chart, to wit, the said copy of which herewith produced, "A," and north twenty-seven degrees west by Franquet's. I am therefore inclined to believe the agreement not to be accidental, but the result of measurement from geographical data. The said Sainte Marie map, as a public document indicating the location of the tract of land mentioned
635 in the said grant as forming the seignory of Sault Sainte Marie, is a muniment of title; but as it relates to the exact boundaries of that seigniory or the manner of defining the outlines thereof, apart from the natural boundaries on the northern and eastern sides of the seignory, to become fully authoritative it would be necessary that the lines completing the circumscription of the tract should be the result of some actual bornage referable to some formal proces verbal of survey. But it must be observed, however, that in fact the larger proportion of the seignoiries in Canada have only been officially surved since the cession of one thousand seven hundred and sixty-three, limited by or adjoining to the property of the crown. Nor was

even that official survey necessary until required either by the neighboring seigniories or for the organization of the adjacent public lands, which not having been granted as seignories during the French occupation of the colony, became from the year one thousand seven hundred and sixty-three subject to be granted by the crown under the tenure of free and common soccage. Franquet on his said map lays down the southern limit of the seignory of Sault Sainte Marie nearly at right angles to the general course of the river Ste Mary, " Bordant la riviere qui separe les deux lacs,"
636 " bordering the river which separates the two lakes," and the west line parallel or nearly so to the natural boundary at the mean depth of six leagues therefrom, therefore containing by the scale of the map thirty-six square leagues equal to three hundred and thirty-five square statute miles, an extent of grant by no means uncommon, several other seigniories in Canada under French grants being of like extent and some few greater. Having attentively read the said original grant and its royal ratification of the concession of the said seigniory of Sault Ste Marie shewn to me, I consider the description given in those titles of the location, boundary, and extent of the seignory to bear out the general correctness of Franquet's aforesaid map. The words of the ratification "du lieu nomine," of the place called Sault Ste Marie is the known location of the ancient mission of that name shewn on several of the early maps of the country, specially the celebrated map called " Mitchell's Map," published in 1755 under the authority, I believe, of General Pownall, of Massachusetts, which latter map, although the delineation thereon of the coast lines of the Lakes Superior and Huron, and of the river that separates them, is rudely and incorrectly drawn,
637 nevertheless it points out the location of the mission of Ste Marie, and the sites of the chapel and fort. A copy of that part of the said Mitchell's map is herewith produced marked "B," which is a true copy of the original and was made under my own supervision. The preamble of the original grant sets out the petition of the grantees for the place (endroit,) called the Sault Ste Marie to locate there their seignory, with six leagues in front upon the portage by six leagues in depth bordering the said river, which separates the two lakes, and the grant concedes to them the said (le dit) Sault Ste Marie with six leagues in front by six leagues in depth, bordering, &c. The ratification adopts the express language of the petition and grants, and confirms the concession (du dit lieu) of the said locality called the Sault Ste Marie with six leagues in front on the portage, by six leagues in depth, bordering the river, &c., necessarily including the portage and extending to include the depth along St. Mary's River, if it may be so called, passing along the front of the portage to the bend downwards to Lake Huron, and also thence downwards to said lake is established as the northern and eastward and natural boundaries of the said seignory, leaving the remaining outline boundaries to be surveyed whether at right angles to the general course as Franquet lays them down, or as may be afterwards determined on the bearings given by the old French colonial ord-
638 nance of 1626, regulating the course of the division lines between seigniories, but which would not touch the seigniory in question under the circumstances of the different direction and condition of that section of the river that bounds the seignory in front. The exact length of the south line of the seignory on Franquet's map by the scale on it is five leagues, nearly equal to one thousand two hundred and twenty chains and ninety links, the league deficient being made up of the depth of the bay; the length of the west line is exactly six leagues or one thousand four hundred and sixty-five chains and twelve links, the area by them, and the natural boundaries on the north and west being about thirty-six leagues, or nearly three hundred and thirty-five square miles. The proportion between

the French and English measure in Canada does not appear to differ materially from that in Louisiana, and the proportion arpents and gunter's chains is as twelve arpents to twenty-four chains and ninety links.

(Signed) JOSEPH BOUCHETTE.

Sworn to and subscribed before me, at the city of Quebec, this fifth day of February, A. D. one thousand eight hundred and sixty-three.

J. J. C. ABBOTT, *Comm'r.*

639 To the first cross-interrogatory he says: I know nothing of the nature or object of the proceeding in this matter. I am not connected in any way with any of the parties petitioners, nor am I in any manner or way interested in this cause or in their success, either directly or indirectly, pecuniarily or otherwise.

To the second cross-interrogatory says: No.

To the third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, and fifteenth cross-interrogatories, respectively, the witness says he knows nothing and can depose nothing.

To the sixteenth cross-interrogatory he says: I know nothing further respecting the paper writing referred to as having the name Franquet and purporting to be signed W. B. Lindsay, enquired of in this cross-interrogatory, than I have already stated respecting it in my answer to the last or general direct interrogatory which was proposed to me; that it purports and is duly certified to be a true copy of the map deposited in the archives of the house of assembly. Franquet, whose name is signed on the said map, I understand, was an officer of engineers in the service of the French king, Louis the Fifteenth, at the date of the map and officially serving in Canada. I do not know by what authority the map was prepared, but being among
640 the government archives I presume it was so prepared for the purpose of affording precise information to the French king and government and as part of his official visit to Canada, and would be acknowledged as a public official document in this country. I do not know and can express no belief on the subject whether the said original map was made from actual survey laid down by chains and links, but in my said answer I have stated my reasons for stating that it was drawn from a correct geographical knowledge of the country it exhibits either from personal examination or from equally reliable information and data. The northern or front and eastern boundaries of the seignory as stated in the original grant being natural boundaries shewn by the configuration of the tract of land granted would be data for Franquet's location of the boundary lines inquired of in this cross-interrogatory and of the extremities of the southern and western lines as located or shewn in the said map. I have no other knowledge or authority for their said locations except what I have stated.

To the seventeenth cross-interrogatory he says: I know nothing and can depose nothing.

To the last cross-interrogatory he says: I do not know nor can I set
641 forth any other matter or thing for the benefit of the said respondents than what I have already set forth in my previous answers to the several direct interrogatories and to the several cross-interrogatories that have been submitted to me in virtue of the said commission in this cause.

To the first additional cross-interrogatory submitted to this witness he says: I know nothing and can depose nothing.

To the second additional cross-interrogatory submitted to him he says: I know nothing and can depose nothing.

To the third additional cross-interrogatory submitted to him he says: I know nothing and can depose nothing.

To the fourth additional cross-interrogatory submitted to him he says: I know nothing and can depose nothing.

To the fifth additional cross-interrogatory submitted to him he says: I know nothing and can depose nothing.

To the sixth additional cross-examination submitted to him he says: I know nothing and can depose nothing.

To the seventh additional cross-examination submitted to him he says: I know nothing and can depose nothing.

To the eighth additional cross-interrogatory submitted to him he says: I know nothing and can depose nothing.

(Signed) JOSEPH BOUCHETTE.

642 Sworn and subscribed before me, at the city of Quebec, the fifth day of February, A. D. one thousand eight hundred and sixty-three.

(Signed) J. J. C. ABBOTT.

Original Exhibits A and B above referred to sent forward for use of the Supreme Court under rule No. 8 (3.)

The Honorable William Badgley testifies as follows:

To the first direct interrogatory he says: My name is William Badgley; my age sixty-two years; my residence Montreal; my vocation a judge of the superior court for Lower Canada, where I have been connected with the profession of the law as barrister and judge for more than thirty years and have thereby become acquainted with the French laws and usages of Canada.

To the second direct interrogatory he says: I am not acquainted with any of them except the said Guy Rotton, whom I have known for several years.

To the third direct interrogatory he says: I knew the said Pierre Amable de Bonne by sight only. From information derived from deceased members of his family, corroborated by authentic sources, I say he was born at Montreal on the twenty-fifth of November, one thousand seven hundred and fifty-eight. The certificate of his birth and baptism there and then is now shewn to me, marked in the margin in red ink Doc. XVIII. He was the son of the Chevalier Louis de Bonne and Dame Marie Louise Prudhomme, whose
644 marriage was solemnized at Montreal on the fourteenth day of July, one thousand seven hundred and fifty-one. The certificate of marriage then and there is now shewn to me, marked in the margin in red ink as Doc. XVI.

His father, a nephew of the Marquis de la Jonquiere, French governor general of Canada, from one thousand seven hundred and forty-nine to one thousand seven hundred and fifty-two, was a captain on half-pay *reforme* in the French infantry regiment of Conde, and was killed at the unsuccessful siege of Quebec by the French forces in one thousand seven hundred and sixty, after its capture by the British troops in one thousand seven hundred and fifty-nine.

Consequent upon his father's death, his mother, Dame Prudhomme, was judicially appointed at Montreal, on the twenty-fifth day of July, one thousand seven hundred and sixty-three, his guardian and tutrix during his minority. The document now shewn to me marked in the margin in red ink as Doc. XIX, is a copy of the record of that appointment.

On the tenth day of March, one thousand seven hundred and seventy,
645 his mother as widow of his father, the said late chevalier, was married at Montreal to the Baron de Longueuil, seigneur of Soulanges. The paper writing produced by me marked A is the certificate of their marriage there and then.

He was brought up at Montreal, his mother's residence, and bred to the

law, and there admitted to the practice as a barrister by commission dated fourteenth March, one thousand seven hundred and eighty.

On the ninth day of February, one thousand seven hundred and eighty-one, whilst such barrister resident at Montreal, he married at Vaudreuil, near the city, Demoiselle Louise Chartier de Lotbiniere; the paper writing produced by me marked B is the certificate of their marriage. On the eighth day of February, one thousand seven hundred and ninety-four, he was commissioned as a puisne judge of the court of common pleas for the province of Quebec; and on the sixteenth day of December following he was raised and commissioned as a puisne judge of the court of king's bench for the district of Quebec, and thereupon fixed his residence at the city of Quebec. I have seen and examined his said commissions as barrister-at-law and
646 puisne judge of said courts, which are recorded in the official registers of commissions kept in the office of the secretary of the province of Canada at Quebec. He resided some years in the city of Quebec after his judicial appointment, and then transferred his residence to a country place at Beauport, in the vicinity of that city, where he married Louise Elizabeth Marcoux on the sixteenth day of January, one thousand eight hundred and five. The paper writing produced by me marked C is the certificate of their marriage. He died at Beauport on the sixth September, one thousand eight hundred and sixteen, and was buried there on the ninth day of the same month; the paper writing now shewn to me marked in the margin in red ink as Doc. XVII is the certificate of his said death and burial there and then. He had no children by either marriage.

The said documents shewn to me marked as Doc. XVI, Doc. XVII, Doc. XVIII, Doc. XIX, and A B C, have by me been compared with the several originals of which they purport to be copies; and I say that they are true copies of the same.

647 The documents, Doc. XVI, Doc. XVIII, and A, are true copies of the several original entries in the registers of the parish church of Montreal for their respective years, 1751, 1758, and 1770. The said original of Doc. XVI being subscribed with the signatures, among others, of the said Chevalier Louis de Bonne and Dame Marie Louise Prudhomme: that of the Doc. XVIII is subscribed by the said chevalier as father of his infant son, and that of A with the signatures of said Baron de Longueuil and Dame Marie Louise Prudhomme, widow De Bonne.

The paper writing "Doc. XIX" is a true copy of the original record thereof, deposited in the superior court at Montreal, and subscribed by the said Dame Marie Louise Prudhomme. The paper writings "Doc. XVIII" and "C" are true copies of the original entries in the registers of the parish church at Beauport for the several years, eighteen hundred and sixteen and eighteen hundred and five, the original of the latter being subscribed with the signatures of the said Pierre Amable de Bonne and Louise Elizabeth Marcoux.

The paper writing "B" is a true copy of the original entry in the register of the parish church of Vaudreuil for seventeen hundred and eighty-one, the original of which is subscribed with the signatures of said Pierre
648 Amable de Bonne and Louise Chartier de Lothbiniere.

The signatures, "Monk," "Coffin," and "Papineau," subscribed to the several documents, "Doc. XVI," "Doc. XVIIII," "Doc. XIX," "A," and "B," are the official signatures of the joint clerk of the superior court at Montreal, the legal custodian of the originals thereof. The signatures "Burroughs and Fiset" and "Fiset and Burroughs" subscribed to the documents, "Doc. XVII" and "C," are the official signatures of the joint clerk of the superior court at Quebec, the legal custodians of the originals of said documents.

Thirdly. I do not know his pecuniary means; he had a considerable judicial income.

Fourthly. He inherited his father's share or undivided moiety of the seignory of Sault Ste. Marie, now in the State of Michigan. The said seignory was granted on the eighteenth day of October, seventeen hundred and fifty, in the usual manner of such colonial concessions, to his said father and to the Chevalier de Repentigny, by the provincial governor de la Jonquiere, and the provincial intendant of justice, Bigot. The concession, as re-
649 quired to effect in such cases, was remitted to France for the royal pleasure thereon, and was ratified by the royal letters patent dated the twenty-fourth day of June, seventeen hundred and fifty-one.

By this inheritance he became and was the rightful legal proprietor of the said undivided moiety of the said seignory, the interest and also absolute property wherein he continued to hold until his sale of the property in seventeen hundred and ninety-six.

Fifthly. He died, as previously stated, at Beauport, on the sixth, and was buried on the ninth day of September, one thousand eight hundred and sixteen.

To the fourth direct interrogatory he says: From information derived from deceased members of his family and from authentic sources, the registers and records of the court of king's bench, at Quebec, for the year seventeen hundred and ninety-six and some following years, which I have examined, the said Pierre Amable de Bonne was residing at Quebec on the twelfth day of July, one thousand seven hundred and ninety-six.

I have no knowledge of the military or other public services of the
650 said Captain or Chevalier Louis de Bonne, except that in the original concession and in the brevet of ratification of the said seignory, he is designated as a captain in the French service, which designation is also to be seen in the said documents, "Doc. XVI," "Doc. XVIII," and "Doc. XIX," and "A" and "B." His name appears also in a journal dated in April, seventeen hundred and sixty, of the battle of Sillery, and said siege of Quebec annexed to the official letter of the Marquis de Vaudreuil, governor of Canada, to the French king, dated the third of May following.

The family name was De Bonne, and was so commonly used, but in family and important documents the honorary name of "De Misseigle" was attached to the patronymic, which was derived from the locality in France from whence the family came to Canada.

Secondly. The said Captain Chevalier de Bonne was reported among the killed at the said abortive seige of Quebec in seventeen hundred and sixty. His name appears in the said journal, among the officers reported killed, as "Captain de Bonne, of the colony."

651 The said journal, with the Governor de Vaudreuil's letter, will be found at page 1089 of the tenth volume of the documents relating to the colonial history of the State of New York, collected from authentic documents in France and elsewhere, and published by authority of that State.

Thirdly. Apart from his said share in the said seignory he appears to have left no other real property. His personal estate was about one thousand dollars, as shown in an account of his estate rendered to his said son by his guardian. I am unable to estimate the probable value of the personal and real estate together left by the chevalier at his decease.

The said moiety of the seignory, during the lifetime of his son, the said Pierre Amable, was estimated at from fifteen hundred to eighteen hundred pounds, Halifax currency, as appears in the letters produced herewith, marked "D" and "E," written to him at Quebec by Patrick Langan, esquire, of Montreal, who was employed by him to sell and realize his said moiety; the letters are under date, respectively, the eighth of April and twenty-ninth June, one thousand seven hundred and ninety-six, written a few days after

the last dated. The sale was effected to James Caldwell on the
652 twelfth day of July, seventeen hundred and ninety-six, for seventeen hundred and fifty-two pounds six shillings and eleven pence, said currency, which, I presume, was the probable value of the said property at the time inquired of in this interrogatory.

I know the handwriting and the signature of the said letters as those of the said Patrick Langan from having seen him write and sign his name. The letters were found among the papers of the said Pierre Amable, left at his decease, and delivered to me by one of his heirs.

To the fifth direct interrogatory he says: I knew the said James Caldwell for many years previous to his decease, which happened in Albany in eighteen hundred and twenty-nine, when he was above eighty years of age. He was a native of Ireland, and came to the United States before the revolutionary war of independence, and married and settled there. He had resided at Albany, as a merchant, for many years before his death, and he also had
a factory at a place called Padroon's Creek, in the town of Watervliet,
653 immediately beyond the northern bounds of the city of Albany.

I do not know that he visited the said Pierre Amable de Bonne at Montreal or elsewhere in Canada, or that they ever met; my impression is that they did not meet.

A negotiation between them did take place, negotiated by the said Patrick Langan, acting in the interest of both parties, by which the said Pierre Amable de Bonne sold and transferred to the said James Caldwell his property and interest in the said undivided moiety of the said seignory. The sale was effected on the twelfth day of July, seventeen hundred and ninety-six, by notarial deed of sale executed at that date at Quebec by the said De Bonne for himself, as vendor, and by the said Patrick Langan and by William Caldwell, son of the said James Caldwell, accepting parties to the said deed for the said James Caldwell, the purchaser, his heirs and assigns, forever.

To the sixth direct interrogatory he says: I have looked upon the said paper writing referred to and mentioned in this interrogatory, and now
shown to me, marked in red ink upon the margin as "Doc. XX," pur-
654 porting to be a copy of a deed made before Charles Stewart, a notary public at Quebec, to James Caldwell, bearing date the twelfth day of July, A. D. seventeen hundred and ninety-six, of the undivided moiety of a fief or seignory at the Sault Sainte Marie; and, I say—

First. I first saw the said paper writing in the summer of one thousand eight hundred and sixty-one, upon my search for it in the record of an action at law deposited in the superior court at Montreal, by the said Pierre Amable de Bonne, in the same term of the court of king's bench, at Montreal, in seventeen hundred and ninety-eight, against the said Patrick Langan, for the recovery of the balance of the price of the sale of the said moiety of the said seignory in the said deed mentioned. It was produced and filed by the said Pierre Amable de Bonne in the record of that action as his exhibit in support of his demand, and was specially declared upon by him in his declaration, filed in the said cause as his legal acte and deed, duly executed by himself with the parties thereunto.

The said action at law was finally discontinued and taken off the
655 files on the first day of the following October term of the said court, namely, seventeen hundred and ninety-eight, a settlement having been effected in the interval. The document having ceased to avail for the said action, was, by the clerk of the said superior court, the legal custodian thereof, delivered to me as the agent of the said Guy Rotton, the legal representative of both said purchaser and vendor named in the said document.

I produce herewith, marked "F," an exemplification of the original record of the said action at its discontinuance, together with a transcript of the proceedings had therein, certified under the official signature of the said clerk at Montreal, and with the seal of the said superior court affixed to the same. I have compared the said exemplification and transcript with the originals thereof, and declare them to be true copies thereof.

Secondly. I never saw the original of the said paper writing, "Doc. XX." I produce herewith a paper writing, marked "G," being a certificate under the official signature of the clerk of the superior court at Quebec, in whose legal custody the said original had been, and which was duly
656 entered at its date in the registry of the said public notary, Charles Stewart, as having been made and executed at that date before him, but that it had been absent from its proper place of deposit since the year one thousand eight hundred and ten. I have myself seen the said entry in the notary's said register deposited in the said court at Quebec, and have personally searched among the notarial instruments of the said notary public, Stewart, deposited in the said court at Quebec, and also caused minute search to be made among his private papers left at his death, but without success. It is my conviction and belief that it has been abstracted and has been wilfully lost and will not again be seen.

Thirdly. Not having personally seen the said original, I cannot say as from actual sight and examination thereof that the signature of P. A. de Bonne to the said original as shown in the said copy, "Doc. XX," was the genuine signature of the said Pierre Amable de Bonne, but I affirm that he did so execute the said original deed by subscribing his signature thereto, and that the said papers writing "Doc. XX" is a true copy of the said original. I explain, when said original deed was executed and long after
657 that time, all alienations of real property and real rights under the French laws and usages of Canada, in order effectually to pass such property by proper evidence of title were required to be made by instruments called notarial actes, which were prepared and executed in technical notarial form before two notaries public or before one notary public and two subscribing witnesses, both forms being equally effective and authentic. The parties select a notary public to execute their contract, which he prepares for them in notarial technical form. It must state the names and descriptions of the parties, the quality in which they contract, whether as principals or as agents, their places of residence, and also the date, month and year, and place in which it is taken. It must be signed by the parties, witnesses, and notaries, the two former signing in the presence of the last, and when the parties cannot write mention should be made of the declaration to this effect. The signature of the parties and witnesses is to be declared by the executing notary, or the acte is null. It ought to be read to the parties by the notary, and the minutes should express that it had been read in the presence of the parties and witnesses. Any additions in the margin
658 or erasures must be expressed as made with the approval of the parties. This acte, so prepared by the notary in the presence of the parties, notaries, and witnesses, and which all have signed or which contains the declaration of the inability of any of the parties to sign, is the original or minute of the acte which was to be preserved by the preparing notory and entered summarily at its date in his repertory or register of the actes made by him. It is then deposited in the office of the receiving notary with his other muniments, from which neither the notary nor any other person is at liberty to remove it without an order of a judge or of a court of justice.

If it is a deed of bargain and sale, or any alienation of real estate, it must also contain a description of it by bounds and metes, its superficial con-

tents, nature and situation, the tenure and the title by which it is held, the original conditions or charges to which it may be subject, the price and mode of payment, and, in general, a statement of the vendor's delivery of his title deeds to the purchaser, and his disseizin (saisine dessaisine) of his property into the possession and seizin of the purchaser. So made and containing these requisites, the minute constitutes by itself the legal proof
659 of the convention or contract expressed in it, and of the signatures of the parties, notaries, and witnesses thereto, in fact, of its full contents and execution, the French laws and usages neither requiring nor permitting any verbal acknowledgment or proof of any of these things as against the parties thereto or their heirs or assigns or persons in their interest. It is also evidence and proves against all other and third persons *rem ipsam*, that is to say, that the convention and agreement contained therein had been in fact made and executed.

The legal absolute prohibition against the removal of the original minute from the custody of the receiving notary necessarily required that the original should be supplemented by copies which should possess equal authenticity and be equally effective as proof as the original. Hence the receiving notary public was required to make and deliver to the parties at once, and afterwards to all applicants for copies interested in the deed, and to them only, copies of his said deposited originals, and to authenticate them by his certificate, under his official signature, that they were true copies of the said original remaining of record and deposit in his office when the copies were taken. These certified copies receive their authenticity and
660 validity from the official notarial signature of the receiving and subscribing notary, and faith and credit were given to them by law as to the original whereof they purport to be copies, and effecting the same full evidence of the existence, contents, and execution of the said original, as well as of their own contents and their correctness as copies, and also of the truth of the said certificate against the parties to the original and named in the said copies, their heirs and assigns, and also against third parties as proving *rem ipsam*.

In the total absence or loss of an original from its legal place of deposit, ancient copies of it, made by the said receiving notary public and certified by him as above to be true copies of the original at that time preserved and deposited in his office, take the place of the lost original, and are presumed exactly to reproduce that original, "elles font le meme foi que l'original c'est a dire elles sont presumees reproduire exactement l'original," and they may be received in legal deposit fully to supply the place of the lost original.

The antiquity of the copy, which may be from ten to twenty years, in the consideration of the law enounces and establishes the fact that a sim-
661 ilar regular and perfect original has existed in antiquis enunciativis probant.

The notarial certificate to the said copy paper writing "Doc. XX," dated twenty-fifth day of January, seventeen hundred and ninety-seven, long anterior to the abstraction of the said original in eighteen hundred and ten, by the said French laws and usages, authenticates the said paper writing "Doc. XX" as a true copy of that original at the date of the certificate, and that the original was then remaining of deposit and record in the office of the receiving and certifying notary public, whilst its legal antiquity makes it, under those laws, equal to all intents to an original document, thereby establishing the fact of the due execution of the said original by the parties thereto at the said date thereof, as shown in the said copy "Doc. XX," and of the genuine character of their said signatures thereto, and that in fact the said signature "P. A. de Bonne," as in the said copy "Doc. XX," exhibited the genuine signature of the said Pierre Amable de Bonne subscribed to the

said original. The said copy "Doc. XX," was moreover produced by himself as his exhibit in his said action at law and as his recognized acte
662 and deed, and both as a lawyer and as a judge in Canada, conversant with the French laws and usages of the country, he could not have been in error or be deceived upon its perfect authenticity and validity.

I also produce herewith a paper writing, marked "H," in which is contained another authentic copy of the said original deed, with notarial certificate thereto, dated at Quebec, the thirteenth of July, seventeen hundred and ninety-six, the next day after the date of the said original deed, in which certificate this last-mentioned copy is certified to be a true copy of the original minute at that time remaining of record in the office of the said receiving and certifying notary, Charles Stewart.

Appended to this last-mentioned and produced copy is a notarial act of discharge and acquittance, executed before the same notary public, Charles Stewart, and witnesses, at Quebec, on the thirtieth day of June, seventeen hundred and ninety-eight, by the said Pierre Amable de Bonne for himself, and by the said Patrick Langan for the said James Caldwell, whereby the said Pierre Amable acknowledged to have received from the said
663 James Caldwell, by the hands of the said Langan, the full balance of the said price of sale "of the bargained and sold premises mentioned in the foregoing deed," to wit, the said last produced copy of the said original, and "freed and discharged the said within-mentioned seignory of Saulte Ste Marie," to wit, the said seignory mentioned in the said last-produced copy from the mortgage with which it was charged for securing the payment of the said price, thereby identifying the said last-produced copy as a legal and authentic copy of the said original deed. The signatures to the said acte of discharge and acquittance, "P. A. de Bonne" and "P. Langan," are the genuine signatures of the said De Bonne and Langan respectively. The signatures of the witnesses thereto, "A. Russell" and "John Buchanan," are those of persons long since deceased, and the signature thereto "Charles Stewart, notary public," is the official signature of the said Charles Stewart, the receiving notary public before whom the said deed of discharge was executed and who was deceased previous to eighteen hundred and ten. The said last-mentioned and produced copy of the acte of discharge appended thereto are moreover legalized and verified by the official signature thereto, dated
664 at Quebec, at the said date of the said discharge, under the signature and countersignature of the governor of Canada and of the secretary of the province for the time, together with the then provincial seal attached to it—the signatures "Robert Prescott" and "George Pownall, esquire," the former the said governor and the latter the said secretary of the province, both of which I know from having seen their similar signatures which had been subscribed to provincial official documents during their tenure of office. The original deed was executed before one notary, the said Charles Stewart, and witnesses, namely, Malcolm Frazer and John McCord, both well-known residents of Quebec at the date of the deed, and who have been dead for upwards of forty years.

The said paper writing and copy "Doc. XX" is in all respects identical with the said last-mentioned and produced copy which has been admitted by the said Pierre Amable de Bonne, in the acte of discharge, to be valid and authentic and thereby a true copy of his said original deed, executed and subscribed by him; his said signature "P. A. de Bonne," copied in both copies, to wit, the said copy "Doc. XX" and the said last-mentioned and produced copy marked H, is the authentic copy of his genuine signa-
665 ture to the said original deed, and the said copy "Doc. XX" inquired of in this interrogatory, and the said last-mentioned and produced copy are severally correct copies of the said original deed.

Fourthly. I have already stated that the said original minute could not be removed from the office of the receiving notary by any private person, and not by the said notary himself except under a judicial or a court order.

Upon the death or cessation to practice of a notary, his entire *notariate*, namely, all his deposited original instruments, his registers and repertories, are at once taken into the ctstody of the clerk of the supreme court of the judicial district in which the notary last practised as such, the law making the said clerk the official custodian of the *notariate* and intrusting to him to make and issue copies of the said recorded and deposited instruments, with his certificate thereto as to the correctness of these copies, and which thereby become of equal authenticity as that of the receiving notary.

At the date of the said deed of sale from De Bonne to Caldwell, the legal mode of transferring the title of lands under the French laws and
666 usages then and still in force in Canada in contradistinction to the English law, was by such a notarial instrument of sale made in a notarial form.

The process of making the transfer and what is done with the instrument has already been explained by me. By whom the notary is appointed is seen as follows: all authentic instruments according to the French laws of Canada are those which have been received by acknowledged public officers and with the solemnities of law. Among these public officers the notary public is one of the most important; he is the conveyancer and also the custodian of the instruments prepared and received by him when executed. His office is of high responsibility, being bound to receive for applicants all instruments which the law requires shall be authentic in themselves or in their execution, or in which parties may desire to have legally authenticated for assurance of their date and deposit, or to perpetuate their testimony if needed, and also for the delivery of authentic copies of them. Until recently the notary public was commissioned to practice by the governor general under the provincial seal, but of late years he is admitted to practice by an official certificate from his district board of notaries. He is
667 compelled to adopt an official notarial signature, which he cannot change without executive authority, and acts under the sanction of an oath for the faithful performance of his functions.

To the seventh direct interrogatory he says: The effect which the said deed had by the law of Canada, as it existed at the date of the deed, under the supposition that the land it mentioned had been situated in Canada, was to vest in and transfer absolutely to the purchaser all right and title of property and all interest in the land sold, which the said Pierre Amable de Bonne had and possessed in and over it, and making the purchaser the real and incommutable proprietor thereof, and transferring to him also the legal tradition or possession thereof by the effect of the delivery to him by the vendor of the title deeds and the special condition of *saizine dissaisine*—disseizin seizin—by the vendor in favor of the purchaser, notwithstanding that the price was to be paid at stipulated future periods of payment. Pothier, an eminent French jurist, says: "With us contracts of sale always contain a clause by which the vendor desseizes himself and abandons the property and possession of the thing sold to seize the purchaser
668 thereof; this is called feigned tradition, for the moment the contract is perfect and accomplished as by the payment of the price, all the rights and interests which belonged to the vendor are transferred the purchaser. The feigned tradition operated by the transfer of titles by the saisine dessaisine, &c., puts the purchaser in possession by the ministry and through the vendor, who from that time is no longer considered in law to hold for himself, but to possess in the name of the purchaser, as the latter

might have obtained possession by any other agent, *animo nostro, corpore etiam alieno possidemus.*" So in England a court of equity will supply the want of livery of seizin, if there be such want, where the feoffement appears to have been for a good or valuable consideration.

To the eighth direct interrogatory he says: The stipulated price in the deed was one thousand five hundred and seventy-seven pounds two shillings and three pence sterling, equal to one thousand seven hundred and fifty-two pounds six shillings and eleven pence Halifax currency, which was fully paid as follows:

By the deed two hundred and twenty-five pounds sterling, two hundred and fifty Halifax currency, was acknowledged to have been paid and
669 was in fact so paid by a draft of said William Caldwell, one of the acceptors of the said deed for the said James Caldwell, in favor of said Pierre Amable de Bonne produced herewith, marked I, and dated at Quebec on the tenth day of July, one thousand seven hundred and ninety-six; it is endorsed with the genuine signature of the said payee, which I identify, and is receipted. The signature "Wm. Caldwell" I know to be the signature of the drawer, said William Caldwell, son of the said James Caldwell, from having seen him write his name. The sum of five hundred and sixty-three pounds eleven shillings and a penny half-penny is admitted by the said Pierre Amable in his said declaration of demand, filed in the said action at law, to have been paid to the said Pierre Amable de Bonne on the fifteenth day of July, seventeen hundred and ninety-seven, and was actually paid at that date, as by his receipt therefor produced herewith, marked J, and signed with his genuine signature, which I identify and declare to be his. Finally the sum of eight hundred and twenty-eight pounds and nine pence sterling in full acquittance and payment of the balance of
670 the said price, is acknowledged by the said Pierre Amable de Bonne under his own signature in the said acte of discharge of the thirtieth day of June, seventeen hundred and ninety-eight, marked H. The said draft and receipt were among the papers of the said Langan, and were delivered to me by his representatives.

To the ninth direct interrogatory he says: The effect which the said clause mentioned in and inquired of by this interrogatory has by the laws of Canada, at the date of the said deed upon the land conveyed thereby, in regard to holding the said land as security for the payment of the stipulated price, was the creation of a technicality called privileged mortgage or lien attached to and charged upon the whole and every part of the land sold in favor of the vendor, and continuing to follow the property into whatever hands it might pass until the final discharge and payment of the mortgage.

By the said French laws and usages deeds of sale usually contain the personal contract of the purchaser to pay theprice and the mortgage
671 right or lien for the security of its payment.

The mortgage is essentially distinct from the title to property in the land charged with it, which may pass through numerous hands and become their absolute property without the interventionor consent of the mortgagee. A presumption of payment from lapse of time, otherwise called a prescription, in English, limitation, attaches to both personal conventions and mortgage rights. Celui qui a prescrit est semblable a celui qui a paye. He who prescribes is like him who pays.

A period of thirty years is an absolute prescription of personal contracts and of mortgage rights. If the property have passed into the hands of third persons, then the periods of ten and twenty years apply against the mortgage according as the mortgagee has or has not happened to reside within the jurisdiction of the locality in which the property is situated. Within these respective periods of prescription, as the case may be, the

vendor must resort to his legal remedy for the enforcement of the payment of his price, or of his mortgage, after which time the law refuses him an action for either.

672 No prescription can apply in this case, the price having been paid in full, and the mortgage thereof upon the property having been discharged by him in his said acte of discharge of the thirtieth June, seventeen hundred and ninety-eight. The actual presence of the tranferree at the execution of the deed for the creation of the personal debt by him was not essential, as he authorized the transaction and adopted it.

To the tenth interrogatory he says: I know the handwriting of the said James Caldwell, from having seen him write, and also sign his name, and also from having in my possession a large collection of documents and papers written by him since seventeen hundred and ninety and upwards. I know the handwriting of the said Arthur Noble, from comparing it with his handwriting to paper writings written by him, in my possession, whereof I produce herewith, marked K, a letter written and signed by him and addressed from Fort Noble, under date of the thirtieth day of October, seventeen hundred and ninety, to said James Caldwell, at Albany, and already ex-

673 hibited and referred to by Charles Paulet Rotton, a witness, in his evidence in this cause, and which was found among the paper writings left by said Caldwell at his death, and was delivered to me by his heirs, upon my request to them, on behalf of the said Guy Rotton. I have looked upon the said paper writing now shown to me, marked on the back in red ink as Doc. XXI A, purporting to be an agreement between Arthur Noble and James Caldwell, bearing date the first day of June, A. D. seventeen hundred and ninety-eight, which I first saw early in the year eighteen hundred and sixty-one, when it was delivered to me for the said Guy Rotton by the heirs of the said late James Caldwell, in whose possession it then was. Application was made by me to the said heirs, on behalf of the said Guy Rotton, for existing documents or paper writings left by the said James Caldwell and in their possession, as his heirs, having relation to his transactions with said Pierre Amable de Bonne and Arthur Noble, with respect to his purchase and subsequent sale of the said undivided moiety of the said seignory of Sault Sainte Marie, where this document, Doc. XXI A, together with a great number of other paper writings and documents con-

674 nected with his said transactions, including the above-mentioned letter from the said Noble, and other vouchers, were delivered to me by the said heirs. The said signatures to the paper writing, Doc. XXI A, to wit, "James Caldwell" and "Arthur Noble," are genuine signatures of the said James Caldwell and Arthur Noble. I speak as to the former from personal knowledge; as to the latter, from comparison of his handwriting.

To the eleventh direct interrogatory he says: I have looked upon the paper writing now shown to me, marked on the back in red ink Doc. XXI, and on which are endorsed the words, "Copy of my deed given Arthur Noble, for Ste Marie," purporting to be an incomplete copy of a quitclaim deed of the undivided half of the said seignory of Sault Ste Marie, and dated eighteenth July, seventeen hundred and ninety-eight, and I say that it came into my possession with the said paper writing, Doc. XXI A, and the other paper writings and vouchers of the said James Caldwell, mentioned by me, which were in the possession of the heirs, and which, including the said Doc. XXI A, were by them delivered to me, upon my application to them therefor, as I have already stated. I cannot say in whose hand-

675 writing is the body of the said document marked Doc. XXI. The said indorsement on said document, marked Doc. XXI A, comprising the following words: "Arthur Noble and James Caldwell, agreement enclosing a copy of a deed given him for Ste Marie, a quitclaim only, the origi-

nal deed being delivered to Mr. Noble," is in the handwriting of the said James Caldwell. The paper writing, Doc. XXI, is, as far as it goes, a copy of the said quitclaim produced in this cause, marked L, admitted by the respondents to be a copy of the said original quitclaim, and by them stipulated to be received in evidence in this cause, as the original quitclaim deed. Having satisfied myself from a careful examination of vouchers and papers left with me several years ago by the said Guy Rotton, having reference to the subject-matter of the petition in this cause, that the documents of title therefor, including the said original quitclaim deed of the eighteenth day of July, one thousand seven hundred and ninety-eight, necessary to support the memorials of the said Agnes Slacke, the then claimant, and by her presented to the Congress of the United States, for the said undivided moiety of
676 the said seignory, had been submitted with those memorials, I proceeded to Washington in the summer of one thousand eight hundred and sixty-one to obtain possession of them, for the purpose of producing them in support of his petition in this case, as the representative of the said Agnes Slacke. A very thorough search and examination were made, in which I participated, in the departments and offices of Congress, in the offices of the clerk of the House of Representatives, and of the secretary of the Senate Chamber, and places of regular deposit of such documents at Washington, from which I ascertained that the said documents and quitclaim had been duly filed with the memorials presented to Congress, but that they had been abstracted and taken from the files. Failing of success in these quarters, I caused search to be made among the private papers of the said deceased persons who had taken part in the said memorials, but without avail. Much time and money have been spent in fruitless search in various other directions, where it was reported to me that the missing documents might be discovered, and it is my conviction and belief that the said original quitclaim deed, of date the eighteenth July, seventeen hundred and ninety-
677 eight, was and is lost.

To the twelfth interrogatory he says: Under the laws and usages of Canada, ancient and modern, an "acte de foi et hommage" was, on the one hand, a declaration of fidelity made by the subordinate to the dominant or superior seignor, in recognition of the feudal tenure under which he holds his seignory, and, on the other hand, a formal recognition by the superior of the property and possession of the seignory held by the subordinate seignor. Fealty and homage were purely feudal, derived from the feudal tenure of the grant; it was real in its nature, not personal, *non persona personæ sed res rei subjicitur;* it was also proprietory and performable upon every mutation of either superior or subordinate seignor, and, in the latter case, whether the mutation was of the entire or of a portion of the seignory, and whether derived from purchase, alienation, or from descent, inheritance, or succession. The duty was required to be performed in the territory of the superior seignor, in which the subordinate seignory was situated. If the mutation were of the superior or suzerain seignor, the subordinate was not
678 required to perform the duty, except after proclamation therefor, and a special written notice given to him, either in person or upon the seignory itself, by the new seignor as suzerain, the subordinate being presumed in law to be ignorant of the change until those formalities had been effected and notice given by the suzerain. If the mutation were of the subordinate, he had forty days from the date of his acquisition to render his duty and to produce the *aveu et denombrement* of his seignory, that is, a statement in detail of his title and his rights thereunder, with the amount of his feudal rents and revenues, and other particulars of his property. Each proprietor or part proprietor of a seignory could perform the duty for his own property only, and his acte for a part or as a co-proprietor could not enure to the

benefit of the other co-proprietors. The duty itself was altogether within the discretion and in the interest of the superior lord, who might abandon it, and delay its performance, either temporarily or indefinitely, in which cases the subordinate enjoyed his seignory without any hindrance or interference, until notice given.

679 The solemnity of the act of fealty and homage, namely the performance of homage and the taking of the oath of fidelity, was originally for assurance to the suzerain or superior of the military service of the vassal—the essential object and consequence of the feudal tenure in the old feudal times; but modern feudal law, since the general abolition of military vassal services, has made the duty of fealty and homage little more than an official formality in itself, but attaching to its performance certain financial advantages in the interest of the superior, such as payment of alienation fines. Within the last century the duty has been seldom required or enforced; our judicial records shew only two or three cases of its enforcement during the entire period of the French dominion in Canada, and no cases whatever have occurred since the British occupation, although frequent instances have arisen of the neglect of the duty.

Apart from its being an official formality, become of little or no consideration, it enabled the seignor to examine the title under which the new seignor held his property, and thereupon to demand the payment of the alienation fines before or at the time of his receiving the fealty. There is no

680 known or recorded instance of such a requirement; the only effect of its non-compliance would have been the suspension of the acte and the enforced recurrence to legal proceedings.

In France fines were due upon all mutations of the subordinate seignor by purchase as well as descent. For the former and its legal equivalents the fine was one fifth of the purchase money, called a quint; for the latter, an average year's feudal revenue of the seignory, called a relief.

The quint has always been payable as part of the royal revenue under both dominions; the latter—the relief—has never been claimed or paid in Canada, and our old French colonial jurists declare that it was abolished here at an early period by a royal decree, and indeed does not exist.

The payment of the quint was enforceable either by the legal process of feudal seizure or by an ordinary action at law; the latter has invariably been invoked under the British government, as well as generally by the French government, there being only five or six cases recorded of

681 the exercise of the feudal seizure under the latter and none under the former.

The feudal seizure was a legal remedy accorded by the custom of Paris to the superior seignor, whereby, under the authority of a judgment in his favor, he took into his own hands the feudal revenues of the seignory, and held them without accountability until the subordinate seignor should have performed his duty, which at once discharged the seizure. No such pretension was allowed without the judgment of a competent court, nor could it extend beyond three years without renewal; any lapse in this respect discharged the seizure, which also terminated wholly upon the performance of the fealty, which the superior could not refuse to receive.

The effect of the feudal seizure was to deprive the neglecting seignor of his feudal revenues for so long as it lasted, but neither in itself nor in its enforcements did this legal process interfere with the subordinate seignor's right of property, nor with the title under which he held his property.

In Canada, where there could exist no possible conflict of suzerain or superior seignors, and where the feudal oath of fidelity was not the

682 subject's oath of allegiance, the acte de foi et hommage, when ren-

dered, was as unprotective of, as its neglect was unavailing against, the property and title of the subordinate seignor in his seignory.

Moreover, the acte de foi et hommage was the mere creature of the municipal law of the custom of Paris, or, as regarded Canada, of the municipal laws and usages of the province, entirely irrespective of and uninfluenced by the public relations of the state or its public laws, or by any treaties between Great Britain and France under which the cession of Canada had been effected.

The treaty of Paris of seventeen hundred and sixty-three, by which Canada was ceded by France to Great Britain, and which thereby effected a change of sovereign, operated merely the substitution of the king of Great Britain for the king of France as superior suzerain, in the same manner as would have been operated upon the decease of the last reigning sovereign of France and the succession of his successor, namely a change in the person holding the feudal suzerainty, which always existed in feudal superiority over the country under the adage of the custom, "nulle terre sans
683 seigneur." "No land without a lord." It likewise operated a substitution of the British governor for the French governor as the representative of the suzerain and the recipient of the hommage, but effected no change whatever in the municipal law of Canada in this respect, which regulated the rights and dues of seignors superior and subordinate, as before the cession; and which has always continued in force until the final abolition of feudal law throughout the seignories of Canada by the provicial statute, eighteen Victoria, chapter three, in eighteen hundred and fifty-four.

I have looked upon the paper writing now shown to me, marked M, purporting to be an authentic copy of an acte of fealty and homage performed at Quebec by the said Pierre Amable de Bonne, on the thirteenth day of February, seventeen hundred and eighty-one, for his undivided half of the said seignory of Sault Ste Marie. I have also read the concession and brevet of ratification copied into the said petition in this case, and I say, as one conversant with the laws of Canada, that by the jurisprudence of Canada, ancient and modern, before as since the session of seventeen hundred and sixty-three, an acte of fealty and homage was not and in no
684 sense could be necessary in order to maintain the title of a seignor—grantee of a seignory—under such concession and brevet of ratification as against the crown of Great Britain.

The acte of fealty and homage was not required by law from the original grantees, but only arose upon the change produced by the subsequent mutation in the proprietorship of the seignory or in the suzerain.

The mode and manner of rendering the fealty and homage were as follows:

The applying seignor presented to the governor his request in the form of a petition drawn up and written on parchment, and under his signature, wherein his seignory or his part of it was described, and whether it was undivided or several property; the petition was accompanied, by an authentic copy of his title of property; at the appointed time the governor received the applicant at the castle of St. Louis at Quebec, where, kneeling upon one knee, with his hands placed within those of the governor, with uncovered head, and without spears or sword, he took the oath of fidelity; a record of the proceeding was made and signed by the governor, which became the acte or instrument de foi et hommage. This was registered in the official
685 register of actes of fealty and homage kept in the office of the crown domain at Quebec, where the original acte was deposited and the written evidence of it preserved, and from which official copies, recognized by law, and authenticated under the hand of the agent of the crown domain for the time being, are issued.

The said copy of the acte of fealty and homage shown to me, marked M, is a true copy of the original acte deposited and registered in the said office of the crown domain at Quebec. I have compared it with the original. The signature "Jos. Laurin, A. D. C.," subscribed to the certificate thereto, is the official signature of Joseph Laurin, esquire, the said agent and the custodian of the said record and register authorized by law to authenticate and issue such copies. I know his said signature from having seen him subscribe the same.

The superior lord might suspend the completion of the acte for cause, as in this instance, for the production of the brevet of ratification, or until information was given to him respecting it. The suspension by law had no ulterior effect either against the seignor or his title, whilst the fact of his reception in fealty, that is, the taking of the oath of fidelity, relieved
686 his property from the feudal seizure, the only penalty for the nonfeasance of the duty.

I have carefully examined the records and registers of actes of fealty and homage in the said crown domain office at Quebec, and I say that the fealty was rendered upon the original concessions upon which alone the acte was made, and not upon the ratification, which, however, was, in several cases, directed to be produced and exhibited to prove that the concessions had been duly ratified by letters patent within the required period of one year from date. This was the fact in De Bonne's acte of homage, and the only reason for the official suspension of his said acte by the governor.

The royal instructions from as early period as sixteen hundred and seventy-six to the colonial land-granting board—the governor and intendant, jointly—required that all concessions should be presented for the royal ratification within twelve months from date; otherwise, that they should lapse. In the said concession to De Bonne and De Repentigny, as in the other concessions, it is thus declared at the foot of the concession: "To be at the good pleasure of his majesty, whose confirmation of these presents they
687 (the grantees) shall be bound to procure within the year." The governor desired to be informed upon this subject whether the ratification had been duly obtained, and to be satisfied thereof either by the presentation of the brevet or by reliable information respecting it.

The subsequent reception and exhibition of the brevet, or even the neglect to exhibit it if afterwards obtained by him, were legally unimportant and in no possible way jeopardized his right and title of property.

To the thirteenth direct interrogatory he says: I speak and understand the French language well, and have perused the said petition in this case and the French concession and brevet of ratification therein set forth. By the common law of England the said expression, "a la charge de porter foi et hommage"—"subject to perform fealty and homage"—is simply the old feudal obligation to render those duties when legally required, to be followed by seizure of the fruits and of the whole profits of the land for the purpose of compelling the performance of the duty. The failure to do the act did not affect the title; if, in some extreme cases, it led to a forfeiture of
688 the grant, that was the result of a legal conviction only, not from the mere failure or refusal to perform the service, but because the refusal was accompanied by a denial of the tenure of the claiming lord, which, in feudal expression, was called a disavowal of tenure. By the common law of England, therefore, a forfeiture can only be incurred by a denial of the tenure of the tenant's estate; hence the rule of the feudal law is that if the tenant deny the tenure, he forfeits the land, because in such course he denies that he holds his feud from his lord. But as by the feudal law the vassal was to be convicted of this denial, so by the English law those acts which plainly and absolutely amount to a denial of the tenure must be done

in a court of record to make them a forfeiture, because such acts appearing on record are equivalent to conviction on solemn trial. All other denials or contraventions that might be asked by dominant lords for trepanning their tenants, and for a pretence to seize their estate, were by the English law rejected, for such conviction, might be obtained without any just cause, but the denial or act on record could not be controverted.

689 Since the act 12 Car. 2d, c. 24, such feudal questions could not arise in England. That statute has abolished all feudal obligations, and among them tenure by homage and the charges incident to the same, as well as all fines and seizures for alienations, &c., and all charges incident thereto or arising from any of them, and converted all tenures into free and common socage, and finally declared that all tenures created by the king for the future should be common socage, notwithstanding any reservation.

Before as well as under that statute, the mere expression inquired of in this interrogatory would have no operation or effect at common law upon the title or otherwise in England, if the mere act implied by that expression had not been done.

By the coutume de Paris, or the law and usage of Canada, a judgment or decree of a regular judicial proceeding would be necessary before the land granted by the suzerain or superior seignor could be considered reunited to his majesty's domain—"reunie au domaine de la majeste."

690 Such reunion directed by the law of the custom in force in France, and in Canada, also, was the penalty of a high crime committed against the person of the suzerain or superior, which was technically a felony; or secondly, an absolute denial of tenure under the superior, which was a desaveu or disavowal. Reunion was not allowed under the law of the custom of any other cause.

Both of these entailed what was technically called a commise, in other words a forfeiture, not *ipso facto*, but under a judgment ordering the same. "Il falloit un jugement qui declarat la perte du fief et que jusqu a lors le vassal pouvait parer a la demande de commise:" " a judgment was essential to adjudge the forfeiture or loss of the fief, until which the vassel could prevent any attempt at forfeiture."

No such commise, in other words, no act of high treason, is to be found among the colonial judicial records; with reference to Canadian seignors the first ground could not happen in Canada; the last ground was equally improbable as the first was impossible, there being no conflicting seignor; no other ground for forfeiture or reunion existed under the law of the custom, and no such forfeiture is recorded in Canada.

691 Under the laws of Canada reunions to the domaine of granted seignories have occurred, not because of the feudal nature of their concession, but by reason of a special condition inserted in the concession deeds, for the purpose of enforcing the settlement of the seignory.

The object which King Louis the 14th at first contemplated, of raising revenue from the trade in furs and peltries, to be largely carried on by great proprietory companies, having failed, it was deemed expedient upon their assignment of the grant to the king in one thousand six hundred and sixty-four, to adopt a political and different system, and to cause the colony to be peopled and settled like the neighboring British provinces; thenceforward the colonial concessions of seignories contained a special condition for enforcing settlement upon the concession under the penalty of the return of the granted lands to the public domaine.

The terms of this condition always followed the stipulation in the grant,

692 "d'y tenir feu et lien et stipuler la mene clause dans les contracts qu'il fera a ses tenanciers:" " to enter upon and improve the grant, and to stipulate the same clause of entry and improvement in his sub-contracts with his tenants."

The condition was not always the same in terms, but it was to the same or equivalent effect: "a faute de quoi la presente concession sera et demeurera nulle:" "In default whereof this concession shall be and remain null," which was the condition in the concession of the seignory of Sault Ste Marie; in others it was "a faute de ce faire le Roi entrera de plair droit en possession des dites terres:" "in default whereof the king shall enter of right into possession of the granted lands; or again: "a faute de quoi elle sera reunie au domaine de sa majeste:" "in default whereof it, the seignory, shall be reunited to his majesty's domain;" which last was the condition in the ratification of the said succession of the seignory of Sainte Marie.

All the concession deeds and their ratifications contained other stipulations, reservations, and charges, as well as the fealty and homage charge; no penalty, however was attached to the want of observance of any
693 of these, but to the breach of the condition of settlement was attached this right of the resumption of the grant as the only guarantee that the king had for effecting settlement.

The terms of the said ratification of the concession of the seignory Sault Sainte Marie, on default whereof "the seignory shall be reunited to the domaine," are less stringent than those used by the king in other patents: "in default whereof the king shall of right enter into possession of the granted lands," or "the said granted seignory shall of right be reunited to the domaine," the difference being altogether in favor of the grantees of the said seignory, but no real legal difference exists between the words of the grant and those of the ratification; by the former, "the concession shall be and remain null," being the legal equivalent of the latter, "it shall be reunited to the public domaine;" the legal and practical result of the nonfeasance in either case being the subjection of the granted lands to the penalty of their reunion to the public domaine.

There were more grants of seignories than means at hand for carrying the settlement condition into effect, and the intervention of the royal
694 will was therefore employed at early periods of colonial land granting to reduce the exorbitant extent of grants, and in a few extreme cases to cancel particular concessions. The last exercise of the prerogative was in seventeen hundred and three, which declared the reunion to the public domain of the province of Acadia, which had been granted several years before as a seignory, and had been allowed to remain unimproved.

The direct application of the royal will being found to work injustice, the king withdrew this exercise of the prerogative entirely, and substituted two royal arrets of the sixth day of July, seventeen hundred and eleven, which directed their own execution by a tribunal constituted by the governor and intendant jointly, to whom were attributed the powers of a court of escheats, to use an English term, which by its decrees and judgments should enforce those laws by ordering the reunion to the public domain of all granted seignories having this settlement condition of the concession, if it had not been performed, and upon which no improvements had been made by the grantees.

695 The neglect of the arrets and the alleged evil of the sale of forest wooded lands being brought under the royal notice the arret of seventeen hundred and thirty-two was promulgated, which confirmed the arrets of seventeen hundred and eleven, and directing their execution according to the tenor and form in them, and also specially enacting against the sale of forest wooded land under the penalty of their reunion to the domain.

But however flagrant the liability to reunion might be, no reunion since the last arret of seventeen hundred and eleven could be effected without the previous intervention of a judgment or judicial decree of the constituted

tribunal, and only then upon a regular requisition in writing therefor by the avocate du roi, king's advocate, upon a regular proceeding before the court; in other words, an action prosecuted by that officer, the arret providing that the reunion should be made "sur les jugements que le gouverneur et intendant rendroient a la poursuite du procureur de sa majeste," "upon judgments which the governor and intendant should render upon the prosecution of his majesty's advocate."

From seventeen hundred and eleven to seventeen hundred and
696 sixty-three only three judgments of reunion of seignories were rendered by the tribunal: the first in seventeen hundred and fourteen for a single seignory, the second in seventeen hundred and thirty-four, also for a seignory, and the last on the tenth May, seventeen hundred and forty-one, against several seignories; in all a regular course of procedure was followed upon the requisition of the king's advocate, the last judgment shewing the whole proceedings, the nature of the plaint, the objections and hearing of the seignors, and the final decree rendered. "We rendering judgment on the requision, &c., have reunited, &c."

The judgments and decrees of the tribunal were not of its own mere motion, nor was it the mere mouthpiece of the royal will; the tribunal could not act at all without the application of the king's advocate, and its judgments were the considered decrees of a competent court of justice, applying the provisions of the law against a proved complaint, for the breach of a conventional obligation stipulated in the concession; moreover, appeals were of right allowed from these judgments to the decision of the supreme court of appeals for the colony the superior council.

697 The subsequent royal declaration of seventeen hundred and forty-three was a general arret de reglement; in other words, a declaratory act for all the French colonies in America, the arrets of seventeen hundred and eleven and seventeen hundred and thirty-two being local only, and it contained the following among other provisions: 1st. The appointment and constitution of a land court to be composed of the governor and intendant jointly, with judicial power to decree reunion to the domain of lands liable thereto from not having been improved and acting upon the diligence and the requisition of the king's advocate. 2nd. A prohibition to the governor and intendant to regrant already granted lands, although liable to reunion, until after their reunion should have been decreed and adjudged, prononcee, by the tribunal. 3rd. Their cognizance, to the exclusion of all ordinary judges, of land differences and disputes, whether as to the validity and execution of the concession, or the situation, extent, or limits of the granted lands. 5th. The validity of all reunions which should be adjudged, prononcees, and the invalidity of all judgments which should not be rendered by them in common. 6th. The power to appeal to the superior council
698 from said judgments and reunions. And lastly, the establishment of a uniform course of procedure to be followed before those tribunals, and to be observed in all the colonies.

The act of seventeen hundred and forty-three was afterwards explained by a subsequent act of seventeen hundred and forty seven, which did not interfere with its chief provisions, and which was the last royal French legislation for the colony of these matters.

The alleged complaint of the breach of the condition of the settlement by the grantee, his nonfeasance of the contractual condition, and his contravention of the existing law, were subjects of contentious jurisdiction, and necessarily within the judicial functions of the tribunal specially constituted to hear and determine upon the complaints, and which alone in the exercise of those judicial functions could adjudge the reunion to the domain of the unimproved grant.

A judgment or judicial decree in a regular judicial proceeding, or, in

English, an action and judgment at law, were requisite by the law of the custom of Paris, and by the law and usage of Canada previous to the cession of seventeen hundred and sixty-three, before the seignory
699 granted in the said concession and in the said brevet of ratification referred to in this interrogatory, or any part of that seignory, could be reunited to the domaine of his majesty, "reunie du domaine de sa majeste."

Since the cession of seventeen hundred and sixty-three the British colonial courts in Canada, constituted by the cognizance of civil rights and the administration of criminal law, have not in fact been invested with the special judicial powers and attributes accorded, to the exclusion of all other ordinary judges, to the French governor general, and the intendant of justice constituted jointly a land tribunal by French special legislation. Even with the possession of those attributes the British colonial courts could not act of themselves; the public officer, the attorney general alone, could impel them to action, and under the British system that officer had no power of himself to initiate any such proceeding. Indeed, neither the attorney general nor the British colonial court could act or have ever acted upon the French laws of reunion of seignories; no such case has incurred; the point has not been raised, nor has any such reunion been attempted under the British rule in the colony.

700 But even admitting the possibility of such a case being presented before the British colonial courts they would necessarily require to follow the law and regular practice of their courts, with reference thereto and to render upon the matter submitted a formal adjudication by a judgment or judicial decree regularly pronounced and recorded according to law; so that under no circumstances, whether under the French dominion since the arret of seventeen hundred and eleven, or under the British dominion since the cession of seventeen hundred and sixty-three, could a reunion of a seignory, if legally possible, be effected otherwise than by a judgment or, decree of a court of justice.

To the fourteenth direct interrogatory he says: I did not know the said Arthur Noble, nor have I received any information from his deceased relatives personally respecting him. I have reason to believe that he was a native of Ireland, and that he died there in eighteen hundred and fourteen. By an act of the State of New York of the fifteenth February, seventeen hundred and eighty-seven, he was authorized to obtain a grant of land from the State, and on the fifteenth day of October following he
701 purchased a patent from the State, a tract of land in Herkimer County, which he called Fort Noble or Noblesborough, which name it still bears, and where he resided for several years. On the second day of September, seventeen hundred and ninety, the said James Caldwell sold to him a lot in the north of Albany by deed in which he is designated as late of the kingdom of Ireland. I produce herewith two paper writings, marked, respectively, N and O, being copies of the said patent and of the said deed, both authenticated under the great seal of the said State of New York. He was residing at Fort Noble or Nobleborough at the date of his said letter, of the thirteenth October, seventeen hundred and ninety, to said James Caldwell, and at the date of the said paper writings, "Doc. XX," "Doc. XXI *a*," in which he is styled "of Nobleborough." I believe he was uncle of the said John Slacke mentioned in this interrogatory, and who in his will was called by him his nephew. I did not know the said Agnes Slacke during her lifetime, but from her own and her family papers in my possession I believe that she was the widow of the said John Slacke, and the
702 mother of the said John Gray Slacke, also mentioned in this interrogatory. The wife of the latter was named Maria Louisa, and she died in the Isle of Man, in eighteen hundred and forty-eight. It is

my belief that the said John Gray Slacke had only one sister married to a Rotton. I know two of her sons, the said petitioner Guy Rotton, her second son in order of birth, and Charles Paulet Rotton, her fifth son in order of birth. I do not know the order of birth of her other sons, nor of their deaths, if any are deceased.

To the fifteenth direct interrogatory he says: I knew the said John Sheriff during his lifetime. He was well known in Canada as a land agent engaged in such matters. I have heard him mention his being employed in the recovery of a tract of land at Sault Sainte Marie, but I was not then apprized on whose account. I now know that he was engaged upon the claim of the said Agnes Slacke before the United States Congress. He commenced with it in eighteen hundred and twenty-five, and had it in hand until his death, which happened in eighteen hundred and twenty-seven or twenty-eight.

I produce herewith a paper writing, marked P, being copy of a
703 protest or caveat by him as agent of the said Agnes Slacke, addressed under date, at Washington, on the seventh day of December, eighteen hundred and twenty-six, to the then Commissioner of the General Land Office there, having reference to the land claimed by the said Agnes Slacke, and mentioned in the petition in this case; and in the summer of eighteen hundred and sixty-one I saw and examined the original of the said copy which was deposited in the office of the secretary of the Senate at Washington, and bearing the genuine signature of the said John Sheriff. The said copy is a true copy of the said original caveat. I compared them together. The said copy was among the papers of said Agnes Slacke delivered to me as aforesaid by the said Guy Rotton several years since. In the said caveat the said quitclaim deed of the eighteenth July, seventeen hundred and ninety-six, is enumerated with her other documents of title at that time in the possession of said Sheriff.

In eighteen hundred and twenty-six he submitted to the Congress her first memorial claiming the said lands, in the preparation of which he had been assisted by Mathew St. Claire Clarke, esquire, late of Washington
704 aforesaid, who after Sheriff's death took possession of the said vouchers and documents of title above mentioned, together with other vouchers subsequently obtained and took up the said claim, and in eighteen hundred and thirty-three, preferred and submitted to Congress her second memorial, at which time he was in possession of the said vouchers and documents of title, including the said quitclaim deed. In eighteen hundred and forty-one, by his means she united with the representatives of the late Chevalier de Repentigny, the other of the said original grantees, in another memorial to Congress upon the same subject, wherein the said quitclaim deed was again enumerated among the documents of title presented to Congress with the said memorial. It is my conviction that the said quitclaim deed was in Clarke's possession, and filed with the said memorials prepared by him, and that it has been abstracted with the other documents of said Agnes Slacke, from their proper place of deposit at Washington, and is lost.

To the sixteenth direct interrogatory he says: The said copy or map now shown to me, inquired of by this interrogatory, is to the best of my belief a true copy of the map deposited in the archives of the provincial government in the legislative assembly of Canada, and was made, upon my applica-
705 tion therefor, by the direction of the late William B. Lindsay, esquire, clerk of the said legislative assembly, the custodian of the deposited map; this copy is officially certified by him to be a correct copy of the said deposited map which is not permitted to be moved from the said archives, and which was made by Pierre Louis Morin, a witness in this cause, a topographer and draftsman, sent to Paris some years since by the provisional government, to collect and copy for its use public documents proceeding from and relating to Canada during the French time, which were then deposited

in the official bureaux of the French government at Paris. Among the original documents there deposited was a collection of maps and plans prepared and signed by Franquet during his mission to Canada, among which was the original map of the Sault Sainte Marie, and also another map showing the location and the extent of the seignories, on the river Richelieu and lake Champlain. The said Franquet, by whom or under whose directions the original maps were prepared and drawn, was a chief officer of engineers in the French service, and had been specially selected by the French king, and sent to Canada on particular service to examine and report to him upon the chief posts and military stations in the colony. He spent the better
706 part of three years in Canada, including the year seventeen hundred and fifty-two, and appears to have visited many portions of the province where posts were established, and prepared maps and plans of the localities visited, for transmission to Paris, with explanatory memoirs upon them for the king's information. Among the number so transmitted by him were that of the seignory of Sault Sainte Marie above referred to, exhibiting the portion of the country with the neighboring lakes and rivers, and the location of the military post established there; and also that of the seignories granted on both sides of the Richelieu River and Lake Champlain, showing the locality and extent of those signories, of which some are now included in the United States territory, exhibiting the French military posts and forts, from Fort Chambly, on the Richelieu, to Fort St. Frederick, now Ticonderoga, on Lake Champlain. This map of these signories is drawn with great exactness, and corresponds with modern delineations of those signories and with the general features of the said river Richelieu and Lake Champlain.

707 In the performance of this special duty and in preparing his maps and plans, Franquet was doubtless assisted by the public provincial documents to which he had access, and especially by those in his own line of service, deposited in the colonial topographical department at Quebec, and in that of the engineers there, which was then presided over by the Chevalier de Lery, the chief engineer and superintendent for the king of the fortifications and public works in Canada, and who being father-in-law of the said Chevalier de Repentigny, one of the original grantees of the said seignory of Sault Ste Marie, would probably be careful to have a proper survey or map prepared of the seignory itself, shewing its extent and locality, particularly for the information of the king as of the advanced military post from which great public advantages were expected to be derived, and which was established in a seignory that had been but very recently conceded, and where at the date of the map the Chevalier de Repentigny was commandant of the post there established.

The preparation of the said Sault Sainte Marie and Richelieu maps, by a royal officer in performance of his special official duty, for public purposes, and for the official use and information of the king, together with their
708 transmission to and reception by the king and their deposit without objection among the public records of the State, mark them as public official documents. Upon identification they would be regarded by the courts of Canada as possessing such official character, and be received as evidence of the boundaries and contents of the seignories shown on them and treated and considered as muniments of title in favor of the grantees as against the crown.

To the seventeenth direct interrogatory he says: I know nothing of the said Jean Baptiste Cadotte, mentioned in this interrogatory, except in connection with the said Chevalier de Repentigny and as a settler upon the seignory of Sault Sainte Marie. The Chevalier de Repentigny was in command of the fort at the Sault Sainte Marie before the date of the concession

of seventeen hundred and fifty. By a notarial acte of procuration to his aunt, dated at Montreal, on the ninth day of August, seventeen hundred and forty-nine, he states that he is about to depart for Michilmakinac on the king's service, from which he returned in seventeen hundred and fifty, having on the twentieth day of April of that year married the Demoiselle de Lery.

709 He was doubtless well acquainted with the Sault, and upon his said return must have made immediate application for a concession of the said seignory of the Sault Sainte Marie. At the time applicants for grants specified with sufficient certainty the land they desired to appropriate, and in several of the Canadian concessions the grantees were required to perfect their title by having a survey made; no such condition was attached to this concession, but the petition was quite explicit in this respect, and the concession was consequently made to him and the Chevalier de Bonne, on the eighteenth day of October, of the same year, seventeen hundred and fifty. The Chevalier de Repentigny did in fact take immediate possession of the grant, a possession which enured to the advantage of both the grantees; and the said Jean Baptiste Cadotte was amongst the first French Canadian settlers, and doubtless accompanied the said chevalier when he went up to take possession in seventeen hundred and fifty, a fact which is established by his sons in their examination before the commissioners appointed under

710 the act of Congress of eighteen hundred and twenty-three, in which testimony, as the claimants of their father's land and as his representatives, they declare that their father, the said Jean Baptiste Cadotte, had been the first French settler at the Sault upon its occupation by the French troops, and that he took possession of the said claimed land through his right, during the time the post at the Sault was occupied by the French troops; this must have been during the command of the chevalier, in the year seventeen hundred and fifty, and whilst the claimed land was part of the said seignory.

Now in the official letter of the Marquis de la Jonquiere, dated the fifth day of October, one thousand seven hundred and fifty-one, to the minister at Paris, after recapitulating the work done by the Chevalier de Repentigny in improving and settling his concession, he mentions in particular, "Il a engage un Francais Marie, au Sault Sainte Marie, avec une sauvagesse a prendre une terre; ils l'ont defriche et ensemene et a moins d'une gelee ils recueilleront de 30 a 35 sacs de ble d'Inde," "he has induced a Frenchman, married at the Sault to an Indian woman, to take a concession of a

711 farm land; they have cleared and sowed it, and unless the frost prevents it, they will get from it from 30 to 35 sacks of Indian corn." Now Cadotte was married to a Chippawa woman, and had a farm at the Sault, and was there with the French troops when they took occupation of the place, circumstances which indicate him to have been the person referred to in the letter.

The command of the Chevalier de Repentigny does not appear to have been taken from him; but upon the British invasion of the colony being actively employed on military service, he gave a power of attorney to his wife to act for him, as appears by notarial acte of twenty-fifth March, seventeen hundred and fifty-nine. He was engaged at the French siege of Quebec, in seventeen hundred and sixty. He would seem not to have left the colony until after the treaty of seventeen hundred and sixty-three, because by a letter dated at Quebec, seventeenth March, seventeen hundred and sixty-four, addressed to him by General Murray, the British governor, the latter expresses his regret that De Repentigny had declined to accept the command offered to him of a corps of Canadian volunteers, to be raised for the British service. After he left the country he continued his service under the French government.

712 His occupations at the Sault were not altogether military. He improved the seignory as shown, and, as was the custom at the outposts,

traded in furs and peltries with the Indians. In a statement of his Canadian property, made up by him and deposited in the bureau of the marine and colonies at Paris, he enumerates his several properties in the colony. Among other things, his moiety of the said seignory of Sault Sainte Marie, which he declares to have farmed out for the fur trade, at the annual rent of two thousand livres, until seventeen hundred and sixty.—(See S, after.)

On the twenty-fifth day of May, seventeen hundred and sixty-one, Madame de Repentigny, by notarial acte, gave a substitution of her husband's power of attorney to Raymond Quesnel, in the said notarial substitution mentioned as "thereabout to proceed to the Sault Ste Marie, and therein authorized him to receive from all persons the packages of furs belonging to her husband remaining at Michilimakinac, in the hands of Messire de Villemonde formerly commandant of that post, also to receive one third of the packages
of furs which were at the Sault Sainte Marie, the proceeds of the
713 partnership there existing between the said Chevalier de Repentigny Caron, and Deconague, and all that Sieur Cadotte may have in his hands, and all other property of whatever kind." Authentic copies of the said procuration and of said substitution thereof to Quesnel, and also of the indeed of the co-partnership above mentioned, and dated at Montreal on the twenty-seventh day of January, seventeen hundred and fifty-six, all being notarial instruments, are produced herewith, marked Q, R, and S, and are true copies of the originals deposited in the archives of the superior court at Montreal, and compared with them by me.

The said Jean Baptiste Cadotte must have been confidentially entrusted by the said Chevalier de Repentigny, and left by him in charge of his effects and property, real and personal at the Sault upon the latter's departure therefrom for Montreal, previous to the British invasion, inasmuch as by the substituted procuration Cadotte was particularly required to deliver to Quesnel, not only all the furs which he had in his hands, but also all other effects of whatever kind belonging to the said Chevalier de Repentigny, manifestly referring to the connection between them.

714 The said Cadotte, moreover, was at the Sault Ste Marie, in seventeen hundred and sixty-two, in the occupation of property there at that time, where Mr. Alexander Henry found him, as mentioned in his book of travels to the Indian countries of Lake Superior, and must therefore have been settled upon the said seignory of Sault Ste Marie for some years prior to the time mentioned by Mr. Henry.

According to the feudal law of the custom of Paris and the French laws and usages which governed the said seignory, so long as it continued to be a seignory, occupants of lands thereon were presumed to hold them as seignorial sub-tenants or *cusitaires*, paying a quit rent, whether they held them under the actual sub-grant executed in form by the seignors, or only under the permission and sufferance of the latter. Their possession in either case was that of sub-tenants having the possession of the useful property of the occupied lands, the *demonium utile*, but holding for the seignors the direct property, *dominium directum* of the said lands, as part of the seignory. This was the legal nature of the occupation of the said Jean
Baptiste Cadotte, or any other French Canadian occupants of lands
715 in the seignory, whether farm lands or village lots, and as such sub-tenant Cadotte was subject to render to the seignors for his farm land, the feudal dues and duties with the usual annual rents, indicating its feudal tenure, nor could he as such sub-tenant, by any period of prescription or limitation of time, free his land from its inherent feudal subjection, so long as the seignory itself existed as such. The said Cadotte was therefore a sub-tenant of his said seignors, in possession of land under them, and holding for them as part of their seignory.

To the last or general interrogatory, he says:

First, as to the liability to reunion of the seignory of Sault Sainte Marie: Nothing in the grant or in the said special laws requiring the fulfilment of the settlement condition of the concession directed grantees in the manner of effecting the required improvements of their seignories, and which, in the known circumstances of the French colony, receiving little material assistance or emigration from France, except through the military and from expatriated convicts, might be, and in fact was, accomplished by the manual labor of the seignors and their servants, by leasehold tenants and sub-grantees of farm lots, or by any legal mode of alienation of the lands best
716 suited for the seignor's own interest, but which should fulfil that stipulated condition of settlement.

The legal liability to seignorial reunion to the domain expressed in the known terms "qui se trouveront dans le cas d'etre reunies," "which are in a condition to be reunited," legally proceeded from the nonfulfilment of the settlement condition alone, the extent of which was declared and explained by the special royal laws promulgated for its enforcement.

The first of these laws was the first royal arret or statute of the sixth of July, seventeen hundred and eleven, which directed its penalty of reunion against seignors, "qui n'ont point de domaine defriche et qui n'y ont point d' habitants," "who have no cleared lands and no settlers upon their concession."

The second was the royal arret or statute of the fifteenth of March, seventeen hundred and thirty-two, which, confirming the arret of seventeen hundred and eleven, and directing its execution according to its form and tenor, also enacted "que tous le proprietaires des terres ou, seigneuries non encore defrichees seront tenus de lemettre en valeur et d'y etablir des habitants, si non les dites terres seront reunies, &c., en vertu de present arret
717 et sans qu'el ent besoin d'autres," "that all owners of unimproved seignories shall improve them and place settlers on them, otherwise the seignories shall be reunited in virtue of this statute without recourse to any other statute therefor."

The third was the royal declaration declaratory act of the seventeenth of July, seventeen hundred and forty-three, which in its second enacting clause employs the general terms "des terres qui doivent y etre reunies," "lands which ought to be reunited," the explanation of which is given in the preamble "des terres concedees qui se trouvent dans le cas d'y etre reunies faute d'avoir ete urises en valeum," "conceded lands which are in a condition to be reunited by reason of their not having been improved."

The condition legally deducible from the language of these special enactments was that the judgment of reunion applied only to unimproved seignories, and that their legal liability to reunion ("in a condition to be reunited") was predicated upon the fact of total non-improvement made upon the seignories, and did not apply to concessions upon which improvements had been made, and settlers placed thereon.

This was the sole ground of the only judgments, three in num-
718 ber rendered since the arret of seventeen hundred and eleven, and is particularly shown at large in the last of them, dated the tenth of May, seventeen hundred and forty-one, whereby twenty seignories were so reunited. In that case none of the seventeen defendants, "defendeurs," therein named, who appeared before the court, in obedience to its process issued against them at the suit of the attorney general, and who pleaded to the action, denied the legal charge against their of the nonfulfilment of their condition and of their breach of the above arrets, "faute d' avoir mis en culture et valuer les terres ou seigneuries qui leur ont ete concedes et d' avoir place des habitants dessus," "for not having put under cultivation and improve-

ment the lands in their seignories granted to them, and settled inhabitants thereon;" but they submitted excuses and alleged their intention to effect improvements as soon as possible. The court, notwithstanding the representations and the entreaties of the defendants, adjudged as follows: "Nous faisant droit sur la requisition du procureur general avons reuni et reunissons au domaine;" [here follows the enumeration of the forfeited concessions;] "et en consequence avons declares tous les concessionaires ci dessus de-
719 nomines dechus de tous droits ou propriete sur icelles terres, &c.," "we adjudicating upon the complaint of the attorney general, have reunited, and do reunite to the domain, the concessions, &c.," naming them, "and in consequence we have adjudged and declared that the said above-named grantees shall forfeit, and be deprived of all their rights and property in the said seigniories." But the court at the same time also took occasion, without having any regard to the representations of the defendants, to reserve to itself the power to regrant the said forfeited concessions, subject to his majesty's approval, to such of the said grantees as should satisfactorily prove that during the next following year they had improved a portion of their former grant by actual expenditure of money and labor, or had settled inhabitants upon the said lands so adjudged to be reunited.

As matter of fact several of these forfeited grants were regranted to the original grantees not long after the date of the judgment, without regard to the required proof of intermediate improvement.

It is matter of fact that the said seignory was taken possessi
occupied by one of the grantees, the Chevalier de Repentigny
date of the concession, and his occupation and possession
720 the benefit of both the grantees.

The governor, De la Jonquiere, himself one of the grant
said concession of seventeen hundred and fifty, in his official le
minister at Paris, dated the fifth of October, seventeen hundred and fifty-one, soon after the date of the royal ratification of the concession of the twenty-fourth of June of that year, refers at length approvingly to the doings of the Chevalier de Repentigny, "who," he writes, "had gone there upon his orders in the autumn of seventeen hundred and fifty, for the purpose, in the first place, of impeding the Indian trade from the north, beyond the Sault, with the English, and in the next place to settle and improve the concession by erecting a fort and buildings there, at his, the Sieur de Repentigny's, own expense, to serve as a secure retreat for the traders and voyageurs engaged in the northern Indian trade, and also to cultivate the land there and raise corn and sustenance for the support of the settlers and of voyageurs resorting thither. The governor refers to the labours of the Sieur de Repentigny, and of his hired servants, engages, in the erection of the required buildings; he states the fitness of the land for cultivation, that the chevalier had procured cattle and horses from Michilmakinac to assist his undertaking, mentions his clearance of the land for a distance
721 around the fort and buildings, the taking up of farm land by a French settler who had married an Indian woman at the Sault, and who would gather thirty to thirty-five sacks of corn from his land so taken up, and finally adverted to the chevalier's treating for the purchase of two slaves to take charge of the corn raised on his clearings."

Subsequently by a letter from the governor, the Marquis du Quesne, to the minister at Paris, dated at Quebec, thirteenth October, seventeen hundred and fifty-four, he also makes special mention of the Chevalier de Repentigny's establishment at the Sault Sainte Marie, and writes, "the Chevalier de Repentigny, who is in command at the Sault Sainte Marie, is much occupied in the establishment of his post, which is essential to stop the In-

dians who come down from Lake Superior to go to Chonegan, Oswego, but I do not learn that the post yields him much revenue."

These official letters from the governors themselves, shewing their knowledge and admission of the satisfactory improvements made upon the concession, sufficiently established the fact that the settlement conditions of the grant had been performed, and being accomplished, that the grant
722 could not be legally disturbed by the crown; that therefore no legal liability existed for the reunion of the seignory to the domaine, and that it was not in fact "in a condition to be reunited" during the French time, whilst under the altered circumstances of the colony by the British conquest such seignorial reunion could have no effect whatever under British dominion. It is undeniable, finally, that under neither dominion was any attempt made or proceeding taken by or on behalf of either government for the reunion or forfeiture of the said seignory.

Secondly, as to the civil status of the said Pierre Amable de Bonne: By the final conquest of Canada under the capitulation of Montreal, of eighth September, seventeen hundred and sixty, and the subsequent cession of the province to Great Britain by the definitive treaty of Paris, of tenth February, seventeen hundred and sixty-three, to which the king of Great Britain was a contracting and assenting party, Canada became part of the dominions of the British crown, and by the mere effect of the law of England applicable to conquered and ceded countries, all persons born therein before the conquest and remaining in the country afterwards became
723 British subjects, a political result affirmed by the terms of the forty-second article of the said capitulation; because the conquest operated the virtual naturalization of those persons, and the treaty itself was a voluntary abandonment of the right of the crown to alienage and an evidence of the will of the sovereign to exempt the conquered country from this branch of his prerogative, it being a legal absurdity, and inconsistent with common sense to maintain that the conquered people became aliens to their new sovereign upon his accession to the dominion over them.

The said Pierre Amable de Bonne, was born in Canada, in seventeen hundred and fifty-eight, and continued to reside and remain therein until his death, in eighteen hundred and sixteen; born a foreigner he became a British subject by conquest, he was not an alien nor obnoxious to the disqualification of alienage as respects Great Britain and the law of England. Were it otherwise this gross absurdity would follow in his case that he, held to be an alien, was by the sovereign to whom he was supposed to be an alien, at the same time invested by royal commission which necessitated the previous taking of the oath of allegiance with the highest function of justice and magistracy, as the representative of that sovereign, namely, that
724 of administering the civil and criminal law of the country. Such a deduction is too ridiculous to be dwelt upon.

Thirdly, as to the civil status of the Chevalier de Repentigny: He, in like manner, was born a foreigner, in Canada, but by the public law and the operation of the said capitulation and treaty, he had the alternative of becoming a British subject by remaining in the conquered colony, or of continuing to be a French subject by emigrating therefrom within a limited period. He chose the latter course and emigrated, the period being uncertain, but probably soon after his refusal, in the early part of seventeen hundred and sixty-four, to accept the offer of the British governor general, Murray, to take the command of a corps of Canadian volunteers to be raised for British service. He continued to be a foreigner, and was not a British subject.

Fourthly, as to the right of property in the seignory of Sault Sainte Marie: The conquest of Canada, under the capitulation of Montreal in September,

seventeen hundred and sixty, does not interfere with private rights of property. The thirty-seventh article of that capitulation protected the seignors, Canadians, and all other persons in the peaceable possession of their
725 private property, seignorial, and rotarial, moveable, and immoveable, thereby affirming the principles of general justice and natural law, that the division of an empire works no forfeiture of previously vested rights, and that the conquering king could not only not violate or disregard the articles on which the country was surrendered or ceded, but that such articles were sacred and inviolable according to their true intent and meaning.

By the fourth article of the treaty of Paris, of seventeen hundred and sixty-three, the colonial inhabitants who had been subjects of the French king, were expressly guaranteed in their right of property and in their freedom to emigrate, provided the emigration was effected within eighteen months from the ratification of the treaty, which thus ascertained the relative rghts of the parties to the property of the country.

All the dates respectively of the capitulation and treaty, the said Pierre Amable de Bonne, and the said Chevalier de Repentigny were owners and proprietors, *par indivis*, tenants in common of the said seignory; the latter in his own right as one of the original grantees, and the former as the sole heir of his father, the other original grantee, who was killed in action
726 in April, seventeen hundred and sixty.

It has been proved that the Chevalier de Repentigny, entered into legal possession of the said seignory, anglice, had seizin thereof, and that his possession legally enured to the benefit and advantage of his said co-grantee, the Chevalier de Bonne, the father of the said Pierre Amable.

By the municipal law of French Canada, the maxim of the custom of Paris, "*le mort saisit le viss*," "the dead seizes or gives seizin to the living," is the fundamental principle of the laws of successions, whether lineal or collateral. The import of the rule is that the property and possession of the estate passed from the deceased owner to his heir, without any actual or corporeal possession of it taken by the latter, who was seized by the disposition of the custom. The possession which the heir acquires by the death of the ancestor is precisely that which was held by the ancestor himself, and thus the heir continues the possession commenced by the ancestor, and he is so completely seized that he may sustain the complaint *en cas de saisine et nouvellette*, a possessory action to recover possession, a remedy not competent to other persons unless they had, in fact, the seizin.

727 The seizin or possession, therefore, of the Chevalier de Bonne was legally continued in his son, the said Pierre Amable, who had in consequence actual seizin of an undivided moiety of the said property at the date of the treaty of seventeen hundred and sixty-three.

Afterwards, in February, seventeen hundred and eighty-one, the said Pierre Amable de Bonne, as a British subject, and as the proprietor in possession of the said undivided moiety of the seignory of Sault Sainte Marie, did homage therefor at the Chateau of St. Louis, in the city of Quebec, to the governor, the colonial representative of his sovereign.

By the provisional articles of peace and reconciliation between Great Britain and the United States, of the thirteenth of November, seventeen hundred and eighty-two, confirmed by the definitive treaty of peace and friendship between the two powers of third September, seventeen hundred and eighty-three, it was agreed that the boundaries between their respective territories should be fixed and settled as stated in the said treaty, namely, *inter alia*, by the water line mentioned in both treaties, following through Lakes Ontario and Erie, "and thence through the middle of Lake Huron to the water communication between that lake and Lake Superior; thence

through Lake Superior, &c.," thereby, under the very terms of the
728 treaties, including the said seignory of Sault Ste Marie within the territory of the United States.

From the date of the said provisional treaty, which put an end to the war, until the subsequent treaty between Great Britain and the United States, of nineteenth November, seventeen hundred and ninety-four, individuals were protected in their rights of property by the law of nations, which protection was affirmed by the terms of the latter treaty, in which it was agreed that subjects of each country should be permitted to hold lands in either, and to sell, devise, and transmit them to their heirs and assigns in the same way as if they were citizens. By this article British subjects owning lands in the United States at the time of this treaty, and their heirs and assigns, so far as respects those lands, and the remedies incidental thereto, were not to be considered as aliens; and it confirmed the titles, whatever they might be, if they were in those subjects or their ancestors at the date of the treaty, and gave them the same legal validity as if the parties were citizens. The treaty did not give title, but protected and confirmed existing titles; nor was it necessary that the parties should have or show an actual possession or seizin in fact of the land claimed.

Under the stipulations of this last treaty the said Pierre Amable
729 de Bonne, a British subject, having legal title to the said undivided moiety of the said seignory at the date of the treaty, it became absolute and indefeasible by the effect of the treaty, and he therefore was competent and had legal power to sell the same to the said James Caldwell, a subject of the United States, by his said deed of bargain and sale of the twelfth July, seventeen hundred and ninety-six.

With reference to the Chevalier de Repentigny it is clear that by said capitulation of Montreal, in seventeen hundred and sixty, he with all other conquered French Canadian subjects, came within its protection and was preserved in his right of property, and thereby in his title to his undivided moiety of the said seignory of Sault Sainte Marie, and that by the treaty of seventeen hundred and sixty-three it was agreed that the said French subjects in the colony should be protected by its stipulations, and permitted to sell their property and freely emigrate, provided the emigration was effected in eighteen months from the ratification of the treaty.

By the proclamation of the king of Great Britain of the seventh October, seventeen hundred and sixty-three, issued within the said period limited for emigration, all persons inhabitants in or resorting to Canada were to con-
730 fide in the royal protection for the enjoyment of the laws of England, and authority was given to the governor to constitute courts of jurisdiction and public justice in the colony for hearing and determining all causes, as well criminal as civil, according to law and equity and, as near as may be, agreeable to the laws of England.

Now it is an established principle of law that into new plantations only so much of the English law is carried as is applicable to the situation of the settlers and the condition of the colony, and the same exception has been applied authoritatively and judicially to conquered and ceded territories, into which the English law of property may have been generally introduced. But it is also legally necessary and fit that the conquered country should have some laws, and therefore until the laws of the country thus acquired are changed by the new laws the old laws continue in force. It is the exclusive right of every state to determine to what extent those born out of its allegiance shall participate in the privilege of natural born subjects, and hence the grand principle of laws applicable to this matter as regard the laws of England is that those laws prevail only to the extent to which they have been positively introduced into the ceded country.

The proclamation of seventeen hundred sixty-three and the royal
731 commissions by which the government of the province was administered are the only documents which refer to the introduction of the English law into the conquered colony. Both are in like terms, and by neither were English tenures nor English law of real property established or introduced generally.

The conflict, then, with the Chevalier de Repentigny, if it had arisen at all, would not be a conflict as between individuals as to his heritable blood, but with the crown, by whom-alone, as the original grantor of the land, his right could be adversely questioned to continue to hold lands after the conquest which had been granted to him before that event. It is laid down by English jurists that aliens cannot inherit, or take by descent, for the want of heritable blood, and that they cannot hold by purchase, rulings which are based rather upon a principle of national and civil policy than upon any reasons strictly feudal. The right of the crown rests upon the prerogative attaching to the king as sovereign, representing the state, as part of the municipal law of England, and not upon the tenure or status of any particular individual.

Now, by the law of England, alienage can only be established
732 upon inquisition of office, and the title to acquired property remained in the acquirer until office found, and when found the property could only be divested by escheat; and so, *e converso*, there can be no escheat until office found. There must be a record to entitle the crown to claim. No British law introduced into Canada the process analagous to the writ of inquiry, nor the court of exchequer, into which the writ could be returned, nor any proceeding for entitling the crown, or those exercising its delegated authority, to the real estate of aliens within the colony. The absence of all machinery shows that the object it was intended for did not exist in Canada.

In fact, the law of England was not introduced into Canada for the purpose of alienage, either by the terms of the public documents above referred to, or by any imperial law or charter to that effect; nor has so much of that law been so introduced as to draw along with it the law touching aliens.

So far, therefore, as applicable to the British crown, the forfeiture for alienage must be shown by record. No such order or proceeding, therefore, exists against the Chevalier de Repentigny up to the date of the
733 date of the provisional treaty of peace of twentieth November, seventeen hundred and eighty-two, confirmed by the definitive treaty of peace of the third of September, seventeen hundred and eighty-three, by which the seignory in question was withdrawn from the jurisdiction of English and Canadian municipal law, and subjected to the law of the *situs*, the law of England *eo instante* becoming inoperative as regards the said Chevalier de Repentigny and his right of property in the said seignory.

Nor was the Chevalier De Repentigny more prejudiced in his property under the operation of the municipal law of Canada than he was by that of England.

By the imperial act, fourteenth George the Third, chapter eighty-three, passed in seventeen hundred and seventy-four, entitled "An act for making more effectual provision for the government of the province of Quebec, in North America, and to make further provision for the government of the said province," territorial boundaries were settled and determined for the province of Quebec, constituted by the act, and the former provisions made for the province of Canada by the said proclamation and the commis-
734 sion by which the government of the province was administered, and

all commissions to judges were revoked and annulled, because they were found to be inapplicable to the state of the province whose inhabitants at the conquest enjoyed an established system of laws for the protection of their persons and property, and it was therefore enacted that all persons should hold and enjoy their property and possessions, with all customs and usages relative thereto, and all other civil rights, as fully as if the said proclamation, &c., had never been made, and that in matters of controversy relative to property and civil rights resort should be had to the laws of Canada.

It has been judicially settled, in the last resort, by the privy council, in appeal upon the question of alienage, and thereby affirming the current of previous decisions, that the law of England, as the law of the state, shall determine the status of the colonial residents and who are or not aliens; but those points being settled by that law, the rights and liabilities incidental to such status must be determined by the law of the colony.

The municipal law of the colony in this respect was at absolute
735 variance with that of England, which subjects the land purchased or held by an alien to immediate escheat and divestment from the purchase, whilst the municipal law of Canada, like that of France, allows the alien to acquire and hold real estate.

Ferriere, a French jurist, in his Dictionaire de Droit, 1 vol., verbo aubain, sums up the authorities of law upon the subject: "Les aubans non naturalizes sont capables de toutes sortes d'actes et contrats entre vifs, de s'obliger par contrat et d'obliger ceux qui contractent avec eux, &c."

"Ils ont la faculte d'acquerir et posseder des immeubles et d'en disposer entre vifs a leur volonte. Ils ne pouvent pas faire de donation a cause de mort, ni des testaments, in aucune disposition de derniere volonte; ils ne pouvent tester ni recevoir par testaments quoiqu'ils puissent faire toutes sertes d'actes entre vifs.

"La raison de la difference est que les contrats entre vifs sont du droit des gens qui est commun a tous les hommes sans distinguer s'ils sont citoyens ou etrangers au lieu que les testaments et les dispositions de derniere volonte dependent absolument du droit civil, auquel les citoyens participent et dont les etrangers sont exclus."

736 "Les etranges n'ont point d'heritiers ab intestat parcequils vivent, a la verite comme libres mais ils meurent comme esclaves; ainsi les biens quils laissent en mourant, appartiennent au roi qui a bien voulu leur permettre d'en acquerier dans son royaume." "Now naturalized aliens may make all kinds of deeds and contracts *inter vivos;* they may bind themselves by contracts and subject to them those with whom they contract; they may acquire and may hold and possess immovables or real property, and may dispose of it *inter vivos* as they please. They cannot make a donation, *causa mortes,* nor testaments, nor any disposition by last will; they can neither test nor receive by will, although they may enter into all sorts of life contracts."

"The reason for the difference is that these life contracts are contracts of the law of nations, which is common to all men, without distinction of citizenship or alienage, but testaments and dispositions by last will rest absolutely upon the municipal law in which citizens participate but from which aliens are excluded. Aliens have no heirs *ab intestato* because they live indeed freemen but die slaves, so that the real property which they leave
737 at their death belongs to the king, who has permitted them to acquire it in his dominions."

By this municipal law the alien could not be interfered with during his lifetime. It was only upon his decease that the right of the crown attached to the real property left by him in the colony.

Yet even for the exercise, in Canada, of this right of forfeiture or escheat a

regular proceeding at law was required to be adopted by the domain officers, and a judgment, in the nature of an escheat, was required to be judicially recorded; the property did not come into the king's possession merely *ipso facto*, or on his mere motion therefor.

No step was taken to determine the status of the Chevalier de Repentigny under the law of England, and his right and title to his property incidental to that status have never been questioned nor considered under the law of Canada at any time; nor, finally, had he been at the date of the treaty of seventeen hundred and eighty-three divested of any part of his property by the government or law of Canada.

The clear legal conclusion is that the title and right of property of the Chevalier de Repentigny to his undivided moiety of the said seignory
738 were untouched, in so far as the French laws and usages of Canada were concerned, and that he was never divested of his title to his property so long as the seignory was within the jurisdiction limits of the colony, from which, however, it was afterwards withdrawn by the mere force of the treaty of seventeen hundred and eighty-three, when it became subjected to the law of the *locus rei sitæ* and continued to be his property until his death, in seventeen hundred and eighty-six, and was then transmitted to his heirs according to the said law of the *situs*.

By the treaty of amity and commerce between France and the United States, in the year seventeen hundred and seventy-eight, French subjects were enabled to hold lands in the United States, with power to dispose of them in favour of such persons as to them shall seem good; and their heirs, subjects of France, whether residing in the United States or elsewhere, may succeed them *ab intestato* without being obliged to obtain letters of naturalization

During the existence of this treaty the Chevalier de Repentigny, a French subject, did hold lands in the United States, namely, the said undivided moiety of the concession in question, and his right once vested did not
739 require for its preservation the continued existence of the power by which it was acquired; if a treaty or any other law has performed its office by giving a right the expiration of the treaty or law cannot abrogate that.

The chevalier, therefore, until his death, in seventeen hundred and eighty-six, was protected by this treaty, and under its terms his son, his only heir, was also protected, because by the treaty he might suceed his father *ab intestato*. The instant the descent was cast the right of his heir became as complete as it can be made. They are seized of the same estate and have precisely the same power during life to dispose of it as he had. The treaty has its full effect the instant the right was acquired under it and had nothing further to perform, its expiration or continuance afterwards was unimportant.

The chevalier died ninth October, seventeen hundred and eighty-six, and left but one son, his heir, who of course became vested with the property in question, and who afterwards died on the second of July, one thousand eight hundred and eight, leaving heirs.

By the treaty between France and the United States, in eighteen
740 hundred, the people of one country holding lands in the other may dispose of them as they shall think proper; they have power to dispose of them without limitation; and it enabled French subjects to inherit lands in the United States without being subject to obtain letters of naturalization.

The direct object of the stipulations of this treaty was to give to French subjects the rights of citizens so far as respects property, and to dispense with the necessity of letters of naturalization. It does away with the inca-

pacity of alienage, and places French subjects, as regards lands, as if they had become citizens. Subsequent treaties between France and the United States continue the same privileges.

I apprehend that under these treaties the rights of inheritance of the son of the Chevalier de Repentigny and of the heirs of his son cannot be questioned.

Fifthly, as to the municipal law to which the seignory was subjected: At the dates of the grant and its ratification and of the conquest of the colony and of the treaty of seventeen hundred and sixty-three, it is manifest that the seignory considered as French colonial territory in Canada was subject to the law of Canada, her French laws and usages,
741 and also her municipal law, but that all of them ceased to have effect upon it fromthe thirtieth of November, seventeen hundred and eighty-two, the date of the provisional treaty of peace, confirmed by the definitive treaty of the third of September, seventeen hundred and eighty-three, between Great Britain and the United States, by which the sovereignty and independence of the United States were acknowledged, as well as their separation from Great Britain, and therefore that from thenceforth all acts relative to any of the colonies in America which becomes part of the United States ceased to have effect as to them. Whether the jurisdiction of Canada ceased on the fourth of July, seventeen hundred and seventy-six, the date of the declaration of independence, or at the date of the provisional or definitive treaties, considered as an original settlement of territorial boundaries for the first time, is immaterial in this matter, because it is a legal certainty that the seignory, the undivided moiety whereof was the property of the said Chevalier de Repentigny, then alive, was, by those treaties, included within the territories of the United States, and being so, that the laws and customs and the municipal law of Canada could no longer have effect
742 upon the locality. Jurisdiction as to the right of property is local, the subject being fixed and immovable; and every attempt of a foreign tribunal to found a jurisdiction over it must from the very nature of the case be utterly nugatory, and its decree, when rendered, incapable of execution *in rem*, it being a fundamental principle, essential to the sovereignty of every independent state, that no municipal law, whatever be its nature or object, should *proprio vigore* extend beyond the territory of that state for which it was established. The limits of its operation are those of the authority by which it is imposed and can be enforced. The maxim of the civil law *extra territorium jus dicenti impune paretur* applies to nations and their respective territories.

I am not disposed to go beyond the date of the treaty of seventeen hundred and eighty-three, because the application of the law of the jurisdiction by the treaty to the seignory is incontrovertible, but, for mere observation, I add that even if the territorial delimitations between the province of Quebec and the United States could not be ascertained or were doubtful under the words of the treaty of seventeen hundred and eighty-three, as regarded the locality in question, the municipal laws of Canada, namely, of the
743 province of Quebec, ceased to all intents and purposes to affect it from and after the twenty-sixth of December, one thousand seven hundred and ninety-one, under the operation of the imperial act of the thirty-first George the Third, chapter thirty-one, which established distinct legislatures and governments for the two separate provinces thereby known as Upper and Lower Canada, into which the king signified his intention to have the said province of Quebec divided,

By a proclamation of Governor Clarke, of eighteenth November, seventeen hundred and ninety-one, the division line between the two provinces was fixed, and the precise period, the twenty-sixth of December of that year,

was established for the coming into full effect of the act of the thirty-first of the king, by the formation of two distinct provinces with separate and distinct legislatures and governments.

The province of Upper Canada, thereby so constituted, would have included within its territorial limits the said seignory of Sault Sainte Marie, if that locality could have been considered as a part of the province of Quebec at that time, and would thereby have subjected the seignory to its local jurisdiction, to wit, that of Upper Canada to the absolute exclusion of that of Lower Canada.

By the first act of the first session of the legislature of Upper Can-
744 ada, namely, the provincial statute of the thirty-first George the Third, chapter one, passed in seventeen hundred and ninety-two, the French laws of Canada, declared by the fourteenth of the king to be the rule of law in matters of controversy and civil rights in the province of Quebec, were abolished, annulled, and made void in Upper Canada, and the laws of England established in their stead in all matters of controversy relating to property and civil rights.

The effect of the establishment of the law of England over Upper Canada territory was the abolition of all seignorial and feudal dues and duties from the seignory and its grantees, because it is a general principle of law that real property is to be held according to the laws of the country where it is situated, and therefore controversies respecting it could only be decided in the state or jurisdiction on which it depends, each province being entirely independent and locally as it were sovereign within and over its own territory; for it would be wholly incompatible with the exclusiveness of both that either should be at liberty to regulate either persons or things not within its own territory. The independent government and legislature accorded to each absolutely excluding all or any concurrence between them in their municipal laws and jurisdiction.

745 Under the legislature of Upper Canada the concession became allodial, and the tenure of the land therein changed into that of free and common soccage.

Sixthly, as to the proof of the alienation by the said De Bonne to Caldwell: Jurists uniformly concur in the adoption of the legal rule, *lex loci rei sitæ* governs all questions regarding the modification or creation of estates and interests in immovable property, and the alienation and legal requirements for transferring the *dominium* of such property upon the principle that the law which confers upon immovable property its qualities is a local law. "*Ubicum que agitur dererum soli alienatione &c., &c., alusque translationibus et acquisitionibus modis inspiciantur leges loci ubi res sitæ sunt.*"

Had the property in question been situated within the province of Quebec, or of Lower Canada, a duly certified copy of the original notarial deed or bargain and sale of the twelfth of July, seventeen hundred and ninety-six would have been of full legal sufficiency to establish the original existence and genuineness of that original deed, with its conventions and signatures thereto; but the situation of the said property, at the date of the said deed, within the territory of a foreign jurisdiction, whether of Upper Can-
746 ada or of the United States, placed the property under the law of another territory. In its situation in Upper Canada, or in the particular territory of the United States, the law of the statute of frauds prevailed and was recognized as forming part of their legal system of jurisprudence, which required for alienation of real property that the conveyance of the freehold estate and interest in the land should be in writing, and that that writing should be signed by the grantor himself. The original deed from De Bonne to Caldwell not only contained all the essentials of a deed of bargain and sale, *res pretium et condensus*, but also the solemnities

pacity of alienage, and places French subjects, as regards lands, as if they had become citizens. Subsequent treaties between France and the United States continue the same privileges.

I apprehend that under these treaties the rights of inheritance of the son of the Chevalier de Repentigny and of the heirs of his son cannot be questioned.

Fifthly, as to the municipal law to which the seignory was subjected: At the dates of the grant and its ratification and of the conquest of the colony and of the treaty of seventeen hundred and sixty-three, it is manifest that the seignory considered as French colonial territory in Canada was subject to the law of Canada, her French laws and usages,
741 and also her municipal law, but that all of them ceased to have effect upon it fromthe thirtieth of November, seventeen hundred and eighty-two, the date of the provisional treaty of peace, confirmed by the definitive treaty of the third of September, seventeen hundred and eighty-three, between Great Britain and the United States, by which the sovereignty and independence of the United States were acknowledged, as well as their separation from Great Britain, and therefore that from thenceforth all acts relative to any of the colonies in America which becomes part of the United States ceased to have effect as to them. Whether the jurisdiction of Canada ceased on the fourth of July, seventeen hundred and seventy-six, the date of the declaration of independence, or at the date of the provisional or definitive treaties, considered as an original settlement of territorial boundaries for the first time, is immaterial in this matter, because it is a legal certainty that the seignory, the undivided moiety whereof was the property of the said Chevalier de Repentigny, then alive, was, by those treaties, included within the territories of the United States, and being so, that the laws and customs and the municipal law of Canada could no longer have effect
742 upon the locality. Jurisdiction as to the right of property is local, the subject being fixed and immovable; and every attempt of a foreign tribunal to found a jurisdiction over it must from the very nature of the case be utterly nugatory, and its decree, when rendered, incapable of execution *in rem*, it being a fundamental principle, essential to the sovereignty of every independent state, that no municipal law, whatever be its nature or object, should *proprio vigore* extend beyond the territory of that state for which it was established. The limits of its operation are those of the authority by which it is imposed and can be enforced. The maxim of the civil law *extra territorium jus dicenti impune paretur* applies to nations and their respective territories.

I am not disposed to go beyond the date of the treaty of seventeen hundred and eighty-three, because the application of the law of the jurisdiction by the treaty to the seignory is incontrovertible, but, for mere observation, I add that even if the territorial delimitations between the province of Quebec and the United States could not be ascertained or were doubtful under the words of the treaty of seventeen hundred and eighty-three, as regarded the locality in question, the municipal laws of Canada, namely, of the
743 province of Quebec, ceased to all intents and purposes to affect it from and after the twenty-sixth of December, one thousand seven hundred and ninety-one, under the operation of the imperial act of the thirty-first George the Third, chapter thirty-one, which established distinct legislatures and governments for the two separate provinces thereby known as Upper and Lower Canada, into which the king signified his intention to have the said province of Quebec divided,

By a proclamation of Governor Clarke, of eighteenth November, seventeen hundred and ninety-one, the division line between the two provinces was fixed, and the precise period, the twenty-sixth of December of that year,

was established for the coming into full effect of the act of the thirty-first of the king, by the formation of two distinct provinces with separate and distinct legislatures and governments.

The province of Upper Canada, thereby so constituted, would have included within its territorial limits the said seignory of Sault Sainte Marie, if that locality could have been considered as a part of the province of Quebec at that time, and would thereby have subjected the seignory to its local jurisdiction, to wit, that of Upper Canada to the absolute exclusion of that of Lower Canada.

744 By the first act of the first session of the legislature of Upper Canada, namely, the provincial statute of the thirty-first George the Third, chapter one, passed in seventeen hundred and ninety-two, the French laws of Canada, declared by the fourteenth of the king to be the rule of law in matters of controversy and civil rights in the province of Quebec, were abolished, annulled, and made void in Upper Canada, and the laws of England established in their stead in all matters of controversy relating to property and civil rights.

The effect of the establishment of the law of England over Upper Canada territory was the abolition of all seignorial and feudal dues and duties from the seignory and its grantees, because it is a general principle of law that real property is to be held according to the laws of the country where it is situated, and therefore controversies respecting it could only be decided in the state or jurisdiction on which it depends, each province being entirely independent and locally as it were sovereign within and over its own territory; for it would be wholly incompatible with the exclusiveness of both that either should be at liberty to regulate either persons or things not within its own territory. The independent government and legislature accorded to each absolutely excluding all or any concurrence between them in their municipal laws and jurisdiction.

745 Under the legislature of Upper Canada the concession became allodial, and the tenure of the land therein changed into that of free and common soccage.

Sixthly, as to the proof of the alienation by the said De Bonne to Caldwell: Jurists uniformly concur in the adoption of the legal rule, *lex loci rei sitæ* governs all questions regarding the modification or creation of estates and interests in immovable property, and the alienation and legal requirements for transferring the *dominium* of such property upon the principle that the law which confers upon immovable property its qualities is a local law. "*Ubicum que agitur dererum soli alienatione &c., &c., alusque translationibus et acquisitionibus modis inspiciantur leges loci ubi res sitæ sunt.*"

Had the property in question been situated within the province of Quebec, or of Lower Canada, a duly certified copy of the original notarial deed or bargain and sale of the twelfth of July, seventeen hundred and ninety-six would have been of full legal sufficiency to establish the original existence and genuineness of that original deed, with its conventions and signatures thereto; but the situation of the said property, at the date of the said deed, within the territory of a foreign jurisdiction, whether of Upper Can-

746 ada or of the United States, placed the property under the law of another territory. In its situation in Upper Canada, or in the particular territory of the United States, the law of the statute of frauds prevailed and was recognized as forming part of their legal system of jurisprudence, which required for alienation of real property that the conveyance of the freehold estate and interest in the land should be in writing, and that that writing should be signed by the grantor himself. The original deed from De Bonne to Caldwell not only contained all the essentials of a deed of bargain and sale, *res pretium et condensus*, but also the solemnities

required by the statute, namely, its being in writing and signed with the signature of the said De Bonne, the grantor; these were sufficient, although the other party did not sign it at all, or although no proof was made that he had signed it.

So far as I can learn, and be legally instructed, the form of conveyance in the United States generally is simple usually by bargain and sale, and possession passes *ex vi facti* without the necessity of livery of seizin.

The controversy touching the real property involved in this case being *ex directo* would properly seem to belong to the forum of the *situs*, and the law of evidence of that *situs* touching such property would also seem to govern the case.

747 Now the loss of the original deed of twelfth July, seventeen hundred and ninety-six, having been established, and the fact of its absence from its place of legal deposit for upwards of fifty years, and also that it has been diligently sought for without success, were circumstances which necessarily applied the rule that the proof of the loss of an instrument is sufficient to lay the foundation for the introduction of secondary evidence of its contents. In this case the following evidence has been adduced to supply the deficiency of the lost original:

First, the paper writing marked "Doc. XX," purporting to be a copy of the said original deed, and duly certified by the public notary, who executed the said original, as a true copy thereof, and which paper writing was produced by the said grantor, De Bonne, as his own proper act and deed, and filed by him as his exhibit, with his declaration of demand in his said action at law against Langan, as shewn by the said exemplification of the record of the said action, and as previously stated by me in my answer to the sixth direct interrogatory.

Second, the original *acte* of receipt and discharge, made and signed by the said Pierre Amable de Bonne, under date of the thirtieth day of June, seventeen hundred and ninety-eight, to and in favor of the said James

748 Caldwell, which act is attached and appended to the said produced copy of the said original marked H, and which is a *fac simile* of the said copy marked "Doc. XX." The said receipt and discharge was given in full satisfaction and payment of the remaining balance of the consideration money of the therein bargained premises, to wit, the said undivided moiety of the said seignory of Sault Sainte Marie, mentioned and set forth in the foregoing deed, to wit, the said copy of the said original deed, and in discharge "of the said seignory," to wit, the said moiety, from the said consideration money of the said deed, to wit, the said sum of one thousand seven hundred and fifty pounds, two shillings and three pence sterling, agreed to be paid to him by the said James Caldwell.

The execution of the said *acte* of receipt and discharge, as well as the genuineness of the said signature thereto of the said Pierre Amable de Bonne, have been already proved by me in my answer to the said sixth direct interrogatory. The said receipt and discharge, so signed by the said grantor, De Bonne, therefore was legally sufficient to take the case out of the statute, and especially if it makes, as in this case it does, reference to the particular writing, so as to prevent the possibility of such paper being substituted for another.

There being no ground for legal presumption that better evidence exists, this evidence adduced fully satisfies the truth of the facts in this

749 case.

Seventhly, as to the prescription and possession claimed by the United States of the lands of the said seignory. During the interval of time from the conquest and cession of the colony to Great Britain until the treaty of seventeen hundred and eighty-three, the property

and possession of the said lands by the said Pierre Amable de Bonne and the said Chevalier de Repentigny continued undisturbed, the crown having made no entry upon the said lands adverse to the interests of the said parties.

The one hundred and thirteenth and one hundred and eighteenth articles of the custom of Paris supplied the law of prescription in French Canada, applicable to real estate lying within its jurisdiction, the effect of which was to give its possessor a property in the land possessed, if he could bring himself within their provisions.

The one hundred and thirteenth article required of the possessor a continuous public uninterrupted possession of the land for ten years, if the owner were resident within the jurisdiction, and of twenty years if he were without that jurisdiction, together with a just title, namely, a title capable of transferring the property, such as a purchase, donation, legacy, and others of like nature, and also good faith from the commencement of the possession to the full expiration of the limited period, that is an assured belief, by the possessor, that the person from whom he acquired had right and title to convey, and did actually convey, the property, a belief which could not subsist where there was no title whatever. The one hundred and eighteenth article required of the possessor a continuous peaceable, public and undisturbed possession for thirty years, without title or good faith. These prescriptions were not bars of a remedy, but actually bars of the right of property.

These are the prescriptions of the municipal local laws of Freneh Canada affecting lands within her territorial jurisdiction ; they form no part of the contract by which those lands pass, but merely act upon it *ex post facto* in case of a suit at law.

It is a principle of law that prescription as affecting real estate is governed by the law of the situation of the realty to be affected by it, because *immobilia reguntur lege loci in quo sita sunt*, the component requirements of such prescription are also governed by the same law, and can only be administered by the forum where the suit is prosecuted and where the prescription is pleaded in bar.

From the peace of seventeen hundred and eighty-three, the lands in question ceased to be within the territorial jurisdiction of French Canadian law, and the French Canadian prescription forming no part of the contract by which they were held could not follow them into their own *situs*, the territorial limits of the United States, and could not be enforced there *proprio vigore* as laws of the *situs in quo;* the lands were emancipated from their original jurisdiction, and became subject to another legal system, by which alone they could be governed, namely, the law of the *situs* as administered by the forum of the *situs*.

But even previous to the treaty of seventeen hundred and eighty-three these custom prescriptions were inoperative, there being neither the just title, namely, *secundum precepta legum exampli gratia*, a sale by a notarial deed, nor the good faith, *bona fide al eo qui dominus non erat cum crederit eum dominum esse rem emerit usucapret*, &c., of the 113th article, nor the peaceable open possession, *possession paisible*, for thirty years, nor held clandestinely nor obtained by violence, for no presciption can ensue from a possession *vi, clam aut precario* of the 118th article. Neither of these prescriptions could even begin to run until after eighteen months from the ratification of the treaty, seventeen hundred and sixty-three, namely, from August, seventeen hundred and sixty-four, and the preliminary treaty of peace which contained the same agreement as to the territorial boundary, was dated on the thirtieth November, seventeen hundred and eighty-two, and was confirmed by the definitive treaty of third September following.

The British crown did not use or exercise either of these prescriptions against the said seignory, even if it had the right to do so; nor has it at any time, since the conquest, set up the thirty years prescription to support possession of alleged private property, except for lots of land required for public use, as fortifications, forts, &c., a domainal and suzerain right, moreover, which was specially preserved in each concession deed.

The agreement of the said treaty unquestionably cast the lands in question into the United States territory, and at once relieved them from all feodal law, and at the same time also from the jurisdiction of the municipal law of French Canada.

In the interval between the treaty of seventeen hundred and eighty-three and the subsequent treaty of the nineteenth day of November, seventeen hundred and nine-four, the lands remained undisturbed with their rightful owners under the protection of the law of nations, a protection which was affirmed by the agreements of that treaty. It is unnecessary to repeat here what has been already adverted to with respect to the effect
753 of the treaty upon the rights and property of De Bonne. The supreme jurisprudence of the United States has given full effect to the ninth article of the treaty, and legally and nationally protected British subjects owning lands in the United States at its date, and their heirs and assigns, in all their rights, so far as respects their lands and the remedies incidental thereto, and confirmed their titles to the same without requiring the necessity that they should have or show an actual possession, or seizin in fact, of the land claimed.

Under the terms of this treaty, prescription of any kind could not affect the real estate and interest of said De Bonne, nor those of his assigns, in these lands.

I have already also explained the legal and national protection afforded to the said Chevalier de Repentigny by the effect of the treaty of seventeen hundred and seventy-eight, and the convention of eighteen hundred between France and the United States, so that in the interval of time between the treaty of seventeen hundred and eighty-three, which passed his estate out of Canada into United States territory, under the mere effort of the said treaty of seventeen hundred and eighty-three, so far as regards the said real estate of the Chevalier de Repentigny and his heirs, the said lands
754 became subjected solely to the law of prescription of the situs, namely, that part of the United States territory where those lands were situated.

The lands in question lying in Michigan, the laws of their situs necessarily govern this case; the law of prescription of the situs is, as I am instructed, essentially different from that of French Canada; it requires a possession of sixty years; it is a bar to the remedy, not to the right; supplies the possessor with an exception to a suit for the disturbance of his possession, but does not extinguish the owner's title or confer title upon the possessor; the possession must be peaceable and continued, without any interruption by the person who is the true owner, and without any acknowledgment by the possessor of that person's being the true owner; the possession is estopped and subject to be defeated by the fact that the possessor had acquired the knowledge that the estate did not belong to him. In all essential particulars the difference between the prescriptions of Michigan and French Canada is broad and distinctive, and binding upon the United States.

The conveyances above mentioned of seventeen hundred and ninety-six and seventeen hundred and ninety-eight, were made in conformity
755 with, and under the stipulations of, the treaty of seventeen hundred and ninety-four, to which the United States were assenting and con-

tracting parties, and by which they are still bound, and the possession by them of those lands adverse to their treaty stipulations, is manifestly tortious and wrongful. As early as December, eighteen hundred and twenty-six, the United States were informed that the real estate proceeding from De Bonne was the property of the then claimant by a caveat, in writing, duly lodged on behalf of that claimant in the head office of the land department at Washington, where it continued to remain on file until a very recent period, at which time and also at the subsequent periods of eighteen hundred and thirty-three, and eighteen hundred and thirty-nine, and eighteen hundred and forty-one, and eighteen hundred and fifty-one, the said claimants presented other memorials to Congress, together with sufficient documents of title of her right of property in the said real estate, and sufficient information that the United States had no property therein; the estoppel, therefore, of the United States, the said respondents, by means of information given to them, is unquestionable.

The Chevalier de Repentigny became an owner of the said lands, become American, by the effect of the treaty of seventeen hundred and eigh-
756 ty-three. He died in seventeen hundred and eighty-six, and both he and his heirs were protected in their said property by the said treaties of seventeen hundred and seventy-eight and eighteen hundred, without the necessity, on their part, of having or showing an actual possession or seizin in fact of the lands claimed by them. Prescription could not affect them.

They also in eighteen hundred and thirty-nine, and subsequently, by their memorials to Congress, gave information to the United States of their title to the said lands, and subjected thereby any dispossession of them by the United States to be tortious and wrongful.

Finally, the act of Congress of eighteen hundred and sixty, under which the petition in this case is proceeding, is formally admissive of the said wrongful possession of the said lands by the United States, and of the rights of the petitioners as against the United States government, and merely puts the petitioners as representing the said Pierre Amable de Bonne and the said Chevalier de Repentigny, upon proof of their title only, the said act having been passed manifestly from the knowledge above mentioned, possessed by the Congress and executive of the said United States, that the lands in question were not the property of the latter.

Prescription, whether French or American, could not, therefore,
757 legally apply to the said lands, under the state of facts alleged in the said petition, nor can it support the pretensions of the United States upon this matter, because the legal possession of the owners continues unaffected by the tortious entry, except so far as actual adverse possession has disturbed it. The legal owners are, constructively, in possession of the whole tract, because their title extends to the whole; a wrongdoer can claim nothing in relation to his possession by construction.

(Signed) W. BADGLEY.

Sworn and subscribed before me, at the city of Quebec, this fourth day of May, A. D. one thousand eight hundred and sixty-three.

(Signed) J. J. C. ABBOTT, *Comm'r.*

758 To the first cross-interrogatory he says: I was aware of them and became acquainted with them by communications with the law agent of the said Agnes Slacke, and with the agent and counsel-at-law of the said representatives, De Repentigny, petitioners in this cause; I have acted as agent for said Guy Rotton for several years past, and am interested as such

in his business to the extent of being paid for my services and advances in his behalf in this matter.

To the second cross-interrogatory he says: I have not been consulted or acted professionally for the petitioners, or as their counsel, retained or paid agent, or otherwise for them. As agent for the said Guy Rotton, I have entrusted the entire professional management of his claim to the agent and counsel of the said petitioners, De Repentigny, who communicate with me in the interest of my principal, and I have remitted to them various documents which I received from him, and by their direction have procured other documents and papers and testimony, which they deemed necessary to produce as evidence in support of his pretensions.

To the third cross-interrogatory he says: I only knew the said Pierre Amable de Bonne by sight; as I have stated in my answer to the
759 last direct interrogatory, he was a French subject by his birth in seventeen hundred and fifty-eight, but became a British subject by the conquest of Canada in seventeen hundred and sixty, and by its cession to Great Britain by the treaty of seventeen hundred and sixty-three. He was called to the provincial bar in seventeen hundred and eighty-one; married, for the first time, in seventeen hundred and eighty-two; was appointed a judge in seventeen hundred and ninety-four; married a second time in eighteen hundred and five, and died in eighteen hundred and sixteen. Upon his father's death, in seventeen hundred and sixty, he inherited and succeeded to his father's undivided moiety in the seignory of Sault Ste Marie, upon which sub-tenants and occupants were settled, who, as seignorial *cusitaires*—that is, tenants at an annual ground rent—were subject by law to pay to their seignors the usual quit-rents and dues for their seignorial tenancies, but I do not know their amount. I know nothing, and can testify nothing upon the several other matters of fact enquired of in this cross-interrogatory.

To the fourth cross-interrogatory he says: The said Louis de
760 Bonne was by birth a French subject, and did not change his allegiance, having been killed in action in the French service before the conquest of Canada. In my answers to the third and fourth direct interrogatories I have stated that he was killed in April, seventeen hundred and sixty, and reported by the French governor of Canada in his official despath dated in May of that year as being among the French officers killed at the French siege of Quebec, in that year. The proper source of proof of his death would be the parish registers of the place of his interment; those of Quebec and Montreal and of other places have been searched by me without success. It is probable that no such entry existed inasmuch as he was killed in battle and most likely buried on the field. I know nothing and can testify nothing nor express any belief upon the other matters of fact enquired of in this cross-interrogatory.

To the fifth cross-interrogatory he says: The said James Caldwell, in seventeen hundred and ninety-six, was a citizen and subject of the United States, where he had constantly resided for some years prior to the declaration of independence of the United States, in seventeen hundred and
761 sixty-six, and where he died. I have stated in my answer to the last direct interrogatory that by the disposition of the custom of Paris, the said Pierre Amable de Bonne upon his father's death, in April, seventeen hundred and sixty, immediately succeeded him and inherited his estate and became and was seized of his father's property, and possession of and in the undivided moiety of the said seignory; and never having been divested or dispossessed thereof until its conveyance by him to said James Caldwell under the said deed of bargain and sale of twelfth of July, seventeen hundred and ninety-six, he was in and immediately previous to the said date of

the execution of his said deed actually seized thereof in continuation of his late father's seizin and possession. I know nothing and can testify nothing and can express no belief as to the seizin of the said James Caldwell, or as to his right in the said seignory being or not accompanied by the beneficial perception of any annual profits.

To the sixth cross-interrogatory he says: In my answer to the sixth direct interrogatory I have stated that careful search was made for the said original deed in the proper place of its deposit and custody and in other
762 places where it might possibly be, but without success, and I produced the official certificate of its legal custodier, shewing its absence from its proper place of deposit since eighteen hundred and ten. I also stated that it was lost and that I had never seen the original. I did not compare the said copy, Doc. XX, with the said original, nor saw it compared.

To the seventh cross-interrogatory he says: Residence and the other qualifications mentioned in this cross-interrogatory were not, under any law of Canada in force in seventeen hundred and ninety-six, essential to ownership and the legal transfer of land, especially of wild wooded land, or of a perpetual interest, equivalent to an undivided moiety in fee simple, or to the ownership and transfer of such an interest as the said Pierre Amable de Bonne then possessed, as enquired of in this cross-interrogatory. By the jurisprudence of Canada the conveyance of wild lands operates complete title without tradition or livery of seizin—in this, I believe, concurring with the jurisprudence of the United States generally. Immediately prior to the execution of the said deed, in seventeen hundred and ninety-six, the said lands being without the jurisdiction of the French laws and
763 usages of Canada, the estate and interest of the said Pierre Amable de Bonne in the said lands was an estate and interest in fee, namely, an estate of inheritance in law, belonging to him as the owner, transmissible to his heirs, and which might continue forever, and it was also without restraint of alienation annexed thereto. The said James Caldwell had also an estate and interest in fee in the said lands immediately after the execution of the said deed. I know of no differences between the estates and interests in the said lands of the said Pierre Amable de Bonne and James Caldwell and that of the said Louis de Bonne therein, as to the mere right of property; the property of the latter was as full as that of his heir and of the purchaser from his heir. The said Arthur Noble, immediately after the execution of the said deed of seventeen hundred and ninety-eight, had also an estate and interest in fee in the said lands. It is my opinion that the said deed of seventeen hundred and ninety-six not only purported to pass but did actually and legally pass the said lands themselves as well as the said perpetual interest in the said lands.

764 The fifty-first article of the custom of Paris is as follows:

"The vassal may not dismember his fief to the prejudice and without the consent of the seignor; he may get rid, se jouer, and alienate and make his profit out of any hereditaments, rents, or, ceus, quit-rents, belonging to such fief, provided the alienation does not exceed two thirds of the fief, and that fealty and some seignorial and domainal right is retained upon the parts alienated."

This alienation was technically known in France as the "jeu de fief." Previous to this enactment the vassal might alienate all his fief, and remain himself, in his own person alone, landless, the representative of the seignorial tenure. This was called a fief in the air, and the dominant seignor lost his rights. But by this article a restriction was imposed; the vassal still had the free disposition, enjoyment, and profit of the lands of which the seignory consisted, and he might therefore sell, pledge, or lease them upon a quitrent, ceus, without paying any dues to the dominant seignor for such

alienation, and without his consent, provided the alienation did not extend beyond two thirds of the property comprised in the seignory and that he retained the entire fealty and some right of seignory and dominion
765 upon the part alienated. The object of this qualification was to protect the seignor against the dismemberment of the seignory without his consent. The article did not apply to nor prevent the alienation or transmission of an entire seignory, or the undivided moiety of a seignory, or of a quotity of a seignory as such.

The seignorial system of Canada, by the effect of the direct intervention of royal legislation, obtained a character altogether peculiar from that of the custom of Paris, and although subjected to the provisions of the custom of Paris in general, it was so only so far as they had not been derogated from, and hence the jeu de fief became in fact without limit, the Canadian seignor being under the absolute obligation to concede and alienate the entire body of the fief uncleared and unimproved, if it was demanded of him by tenants, so that the limitation to the two thirds, under the article, had no effect. The article of the custom so derogated from, which had no legal effect under the French laws and usages of Canada, in Canada itself, even if the lands sold had been French Canadian, could have no bearing
766 upon the particular transaction of seventeen hundred and ninety-six, nor upon that from Caldwell to Noble, on the eighteenth of July, seventeen hundred and ninety-eight, as both are stated in the said petition, the lands at both those dates being beyond the effect of the article and of the jurisdiction of the said French laws and usages.

The third section of the arret of seventeen hundred and thirty-two is as follows:

"His majesty doth expressly prohibit all the seignors and other proprietors from selling any wood land, under the penalty of the nullity of the deed of sale and restitution of the price of the land sold, which shall in like manner be reunited to his majesty's domain; and further, that both the arrets of sixth July, seventeen hundred and eleven, shall be put into execution according to their form and tenor."

The article applied generally to all proprietors of forest lands. As regards one class of proprietors, the seignors, it prohibited them from disposing by sale of forest lands which they were bound and obliged to concede and alienate only a a quitrent, ceus; such sales being for the standing timber alone, its removal would interfere with the object of the government, because the timber would be removed and the land would be left without an
767 improving tenant. The reason actually given to the colonial authorities, and echoed by the royal government, was, so much wood would be cut down for fuel that the country would soon be left without it. One hundred and eighty years have since passed, with infinitely increased demand, but the wood is not yet exhausted, although cut down yearly since that time.

As matter of fact the enactment had no operation, and if it had up to the time of the conquest it could have no bearing upon the said transactions of seventeen hundred and ninety-six and seventeen hundred and ninety-eight, which covered the sale, not of a lot of forest land, but of one entire quotity of a seignorial concession, namely, the undivided moiety of an entire seignory of thirty-six square miles in extent, including its cleared and uncleared land, forest and open, arable or pasture land; its woods and waters, whatever they might be. At the said dates of seventeen hundred and ninety-six and seventeen hundred and ninety-eight, the said lands conveyed by them were no longer subject to the effect or jurisdiction of the third article of the royal arret of seventeen hundred and thirty-two, or of any part of that enactment.

The sale of forest lands was expressly forbidden under the arret of
768 seventeen hundred and thirty-two, and impliedly, and that of seventeen hundred and eleven, which ordered seignors to concede lands, and to sell them. The penalty of the first mentioned arret is correctly given in this cross-interrogatory. The words inquired of, "les quelles seront pareillement reunis de plein droit au domaine, &c.," do not mean that the sold forest lands should stand reunited *ipso facto* by virtue of that arret, without a judgment or judicial decree of reunion, but that no other royal arret need be referred to or required as the law for enforcing the penalty. The arret could not put itself into execution, and reunions to the domaine could only be effected by a record of a proper court, shewn by a judgment or judicial decree. But, as before observed, the lands in question were not within the jurisdiction of this arret, and the transactions of seventeen hundred and ninety-six and seventeen hundred and ninety-eight were not affected by it.

The share of the said Pierre Amable de Bonne in the said concession in seventeen hundred and ninety-six consisted of the undivided moiety thereof, including all its lands, woods, and waters, whatever they might be.

I do not know what extent of it was cleared at that time. The
769 arrets of the sixth of July, seventeen hundred and eleven, and the declaration of seventeen hundred and forty-three, were enactments. The latter had no greater effect locally than the former, considered as laws; these arrets were local for Canada. The declaration was general for all the French colonies in America; the former were original enactments, the latter was a declaratory act; their policy, as well as that of the arret of seventeen hundred and thirty-two, and their objects were to enforce the improvement of crown grants, under the penalty of reunion, and to enforce that penalty the last in time had not more power than the first.

In the words translated by this sentence, "All reunions which shall not be pronounced," are to be found in the fifth article of the declaration of seventeen hundred and forty-three, which contains two important provisions; in extenso it is as follows, including the words referred to in this part of this cross-interrogatory, "comme aussi toutes reunions, &c.:" "1st. We declare to be null and of no effect all concessions which shall not be made by the governor and intendant jointly;" that is, concessions made by one of them, except in case of the death of the other, or of his absence from the colony. 2d. "We declare to be null and of no effect all reunions that shall not be pronounced by them;" that is, all actual resumptions of granted
770 lands, namely, the very alleged actual reunions *ipso facto*, and by the operation of law, especially by the arret of seventeen hundred and thirty-two, inquired of in this part of the interrogatory. The word "reunions" inquired of and included in the said last provision does not mean or apply to a judgment or decree of reunion, but is used in opposition to it, inasmuch as the said article expressly and unequivocally nullifies and repudiates the possibility of such *ipso facto* and *de jure* reunions. I do not know of any adjudged case in which it has been held by any authority that the fifth article applied to reunions by operation of law. If such can exist it must have been rendered most inadvertently, and is grossly incorrect, and utterly at variance with the plain and precise denunciations of the act against such reunions by operation of law.

The declaration of seventeen hundred and forty-three does not refer to the arret of seventeen hundred and thirty-two at all, but it plainly refuses all possible reunions by operation of law, alleged or supposed as in this interrogatory to be discovered in the latter arret. I am not aware that the declaration repealed the arret. If such a case inquired of there be, it would seem to be well judged from the nullifying terms of the said declara-
771 tion.

The said judges, assembled at Quebec on the fourth of September, eighteen hundred and fifty-five, did reply, as stated, that the said arrets of seventeen hundred and eleven and seventeen hundred and thirty-two, and the declaration of seventeen hundred and forty-three, were in force at the time of the cession in seventeen hundred and sixty-three, but their opinion did not extend the operation of those laws beyond that time even to Canada, and could not certainly render them operative or extend them into the United States territory upon lands withdrawn from subjection to those laws by the terms of the treaty of peace of seventeen hundred and eighty-three.

To the eighth cross-interrogatory he says: I have already stated in my answer to the eighth direct interrogatory that the consideration money of fifteen hundred and seventy-seven pounds two shillings and three pence sterling was paid to the said Pierre Amable de Bonne, and I have shewn how it was paid by reference to the vouchers produced. It is my conviction that the above was the actual and only consideration. Before the date of the treaty of September, seventeen hundred and eighty-three, the alienation fine, or quint, would have been one fifth of the purchase-money, which was rebated by one third if the intending purchaser gave information to the receiver general before passing the contract, and by reduction of two
772 thirds if the quint was paid immediately. There was no quint accrued, even if the lands were in Canada, until the alienation in seventeen hundred and ninety-six, when this fine could not apply, the lands being no longer feodal, either under the effect of that treaty in seventeen hundred and eighty-three, or under the effect of the division of the province of Quebec by the statute of seventeen hundred and ninety-one, which, without the treaty, would of itself have abolished such feodel charges by casting the seignory within the operation of the English law of free and common soccage of Upper Canada. Quint carried no interest except from the date of the demand by action at law for its recovery. Its non-payment would have had no effect whatever upon the title. The quint was payable by each purchaser upon the amount of his own consideration. As neither quint nor interest could be due I do not make the calculation mentioned in this cross-interrogatory.

To the ninth cross-interrogatory he says: There could be no fines due to the superior domain, because on the second of September, seventeen hundred and eighty-three, the provisional treaty of peace of seventeen hundred and eighty-two had been before then concluded, and which the definitive
773 treaty of the third of September, seventeen hundred and eighty-three, confirmed. In reply, however, to this question, no detailed calculation is required. The consideration of the sale to Caldwell in seventeen hundred and ninety-six was fifteen hundred and seventy-seven pounds two shillings and three pence, one fifth whereof would be three hundred and fifteen pounds eight shillings and seven pence three farthings. That to Noble in seventeen hundred and ninety-eight was nominally fifty thousand dollars, one fifth whereof was ten thousand dollars, both subject to the two thirds reduction, which would doubtless have been applied for had the sales been of Canadian lands, subject to such fines, at which reduction the former would have stood one hundred and five pounds two shillings and eleven pence, payable by the said James Caldwell, and three thousand three hundred and thirty-three dollars thirty-four cents, payable by the said Arthur Noble, in both cases without interest. No fines could be due by the French Canadian law upon any of the other conveyances.

To the eleventh cross-interrogatory he says: I am relieved from an-
774 swering this cross-interrogatory.

To the twelfth cross-interrogatory he says: I have an authentic copy of the record of said acte of homage by said Pierre Amable de Bonne, dated the

thirteenth of February, seventeen hundred and eighty-one, for his said undivided moiety of the said seignory of Sault Ste Marie, and have produced the same, marked M. If a record of the aveu et denombrement, or inventory, and description of the seignory at all existed, it should be in the bureau of the crown domaine at Quebec, where I have searched for it without success, and up to this period of time there are only seventeen or eighteen aveus et denombrements on record filed since the cession, and only beginning in seventeen hundred and seventy-seven, shewing how little important they were considered. I have myself verified this fact. The record of the acte of homage is there, but not that of the aveu et denombrement. It is my belief that it was never produced at all. The proper time for its production would have been within forty days from the date of De Bonne's acquisition by inheritance. The aveu et denombrement should contain a particular description of the lands comprised in the seignory, the annual rents and profits of seignory, and other particulars at the time. The said words at the foot of the acte of homage, "We suspend the said fealty and homage until the appearer shall shew the ratification of the said seigneurie, or more fully informed," does not mean an absolute divesting suspension of the acte
775 itself of fealty and homage, which would be a contradiction, inasmuch as the homage was actually received, and the fealty sworn to, and, moreover, the acte of fealty itself was signed by the governor, and recorded, but they mean that the acte stood until information was had of the existence of the royal ratification, either by its production or by some credible means.

The obtention of the ratification being established, its exhibition to the domain agent would, of itself, have been sufficient to issue an authentic copy of the record of the acte of fealty as a fact completed, without reference to the governor, the suspension being only directory to the domain officer, and as the royal ratification is shown to have been granted at its date, and, moreover, to have been duly registered by the government officer in seventeen hundred and sixty-six, being prior to the acte of fealty, the nominal suspension or postponement was wrong at the time, because the government had actual knowledge of the existence of the ratification by its own registration thereof, and therefor no legal effect could follow from the governor's direction, because the acte having been done at the time of the direction was a ministerial mistake.

I have in my answer to the 12th direct interrogatory explained the
776 object and use of the said *acte* of homage; the said suspension does not appear to have been removed.

I do not know it to be the fact that the ratification was not presented, and if it were not its non-production was, manifestly, not caused by the very gratuitous suggestion stated in that respect in this cross-interrogatory. The assertion is incorrect that the ratification contained a superadded special condition not to be found in the concession, inasmuch as slight familiarity with the French legal phraseology of the grant would shew that the two deeds in this particular did not differ in effect; they both contain the same condition of improvement and settlement by actual entry of the grantees and their subtenants, although the words used slightly vary in form but not in effect, and so also they both contain the same effective penalty, the mere phraseology of the penalty in each being slightly different. In the concession it is "that upon default of compliance with the condition of settlement the grant shall be null," whilst the penalty of the ratification is that in such default "the lands shall be reunited;" both declaring in form and in effect the forfeiture of the grant and the return of the lands to the domain.

An acte of fealty and homage by one of two co-proprietors does not enure to the benefit of the other unless admitted by the suzerain to be also
777 for the co-proprietors.

At the time of the *acte* of fealty and homage in seventeen hundred and eighty-one, the said De Bonne was *proprietos par indivis*, unpartitioned proprietor, with the Chevalier de Repentigny in the said siegnory, each had an undivided moiety of the whole, each holding *totum in toto et totum et qualibet parte*. As heir of his father he was associated by law in the concession with his father's co-grantee. It was a tenancy in common in which there was no survivorship between them. There was unity of possession, but each held by distinct titles, the said Chevalier de Repentigny holding by the original grant, the said Pierre Amable de Bonne holding by descent through his father, a co-grantee under the said orignal grant. By the French law of Canada each was entitled to take a several and distinct moiety, but until partition was effected by proceedings at law they held in common *per une et per tout*. The fact of the frontage of the seignory being on Saint Mary's River would be immaterial until partition was effected, because, though each was entitled to a moiety, neither could appropriate a particular moiety until partition had.

I believe that in the United States tenancy in common may be created by descent as well as by deed or will. In England, by the common law, tenancy
778 in common is created by deed or will, or by change of title from joint tenancy or coparcenary, or it arises, in many cases, by construction of law, but not by descent. Tenants in common take by distinct moieties, and have no entirety of interests, and therefore there is no survivorship between them. In the United States, whether the estate be created by act of the party or by descent, in either case the tenants in common are deemed to have several and distinct freeholds, and each tenant is considered to be solely or severally seized of his share.

Homage by the other co-tenant was not essential to protect the title of the said Pierre Amable de Bonne to his undivided share, by whom I have already shown that it was not essential to be rendered to perfect his own. The original grantee was not required to render homage at all except upon a change of sovereign. The Chevalier de Bonne was killed before that occurrence. Neither James Caldwell nor Arthur Noble, nor any of the other persons inquired of in this cross-interrogatory, except the Pierre Amable de Bonne, ever rendered homage, or were required, or could be required to do so, their lands not lying within the jurisdiction of the law of homage.

To the thirteenth cross-interrogatory he says: By the laws in force in
779 Canada, in seventeen hundred and fifty-one, the meaning and effect of the said expression inquired of would be the performance of fealty by the subordinate seignor when duly required. The failure to do the act when duly required would not affect the title, but might temporarily affect the seignor's enjoyment of his feudal revenues, if the dominant seignor proceed by feodal seizure; otherwise, the failure could have no effect whatever. The act of fealty was performable upon every mutation of superior and subordinate seignor. No legislative change in the law of the *coutume* occurred in these respects previous to the third of September, seventeen hundred and eighty-three, but from the altered circumstances of the province, dating from the conquest, the law had become almost nominal, and was not enforced.

The latest in date is the 10th of May, seventeen hundred and forty-one. No decrees of reunion have been pronounced since then, and no proceeding for such reunions has been adopted or attempted by the British government. The French law in that respect became a dead letter and ceased to have effect.

I have looked upon the said acts or arrets of seventeen hundred and eleven and seventeen hundred and thirty-two, and the royal declaration of seventeen hundred and forty-three, respectively, and say it is not the fact that the Canadian courts of justice carefully and intentionally, or for

780 any cause, abstained from exercising the judicial powers created by those laws, even if they had been supposed to have existence. The courts had no power *ex mero motu* to move, and could not move in the matter, nor were they ever moved to any adjudication upon the subject; the judiciary powers which had been conferred by the French king upon his governor and intendant jointly, as a joint tribunal, with administrative powers attached, ceased at the conquest, and the British king's commission which alone, unless by act of Parliament, could constitute courts of justice, conferred no such powers, and could not confer them upon the ordinary judges of the courts, nor make the governor a court of record.

I am not aware of any such case of the resumption by the British crown or Canadian government of the possession of such an abandoned seignory, or of a regrant of portions of it, or of the acquisition or compensation given, because a former judicial decree in a proceeding for reunion had not been obtained, the whole as inquired of in this cross-interrogatory; even if such a case existed, it could not apply to land in Michigan.

The formal judicial proceeding inquired of was, in practice, necessary since seventeen hundred and eleven in such cases as the present, and was adopted as only legal and proper course in the only three cases that
781 occurred since that time.

I have no conception how otherwise the United States could possibly obtain that judicial decree of reunion in their power otherwise than by erecting a similar tribunal by the appointment of a French governor and intendant jointly *pro hac vice*, and adopting the municipal law of French Canada in that respect, as it was contained in the declaration of seventeen hundred and forty-three. It is not for me to say if that course could be effected; it certainly has not been done as yet.

I have looked upon the said amended petition, and say that the state of facts referred to in the said cross-interrogatory does not justify the supposition contained in this cross-interrogatory that the said seignory was at any time since seventeen hundred and sixty-two in the condition of being reunited to the public domaine by forfeiture or reunion *de facto* or *de jure*. None such existed or could exist since seventeen hundred and eleven, and still less since the declaration of seventeen hundred and forty-three; nor could any reunion be had without a previous judgment of a court of justice in this respect since seventeen hundred and eleven. The French king could only act by a record. The concession being *par indivis* and unpartitioned, I cannot undertake to make the distinction of the share of De Repentigny
782 from that of De Bonne.

There is no seignory existing at present, and whatever the alleged state of facts may be, there cannot be at present, apparently or otherwise, any liability upon Michigan lands to forfeiture as the penalty of reunion under laws which have ceased to have effect since the conquest of Canada.

The translation of the entire third article of the declaration of seventeen hundred and forty-three, including the said words inquired of, is as follows: "They, the governor and intendant, shall not grant any lands that have been conceded, although liable to reunion, until after their reunion shall have been adjudged, (pronounced,) upon pain of the nullity of the new concession, but without prejudice, nevertheless, to the reunion which may be always sued for against the original grantees;" meaning that no conceded lands, although liable to reunion, shall be regranted without a previous judgment of reunion rendered against them and their original grantee, and that all regrants without such previous judgment decreed against them shall be null and void, plainly intimating that the supposed reunions *de facto* or *de jure*, did not exist and could not exist without a proceeding and judgment of forfeiture.

I can express no belief upon the alleged negative qualifications for
783 reunion mentioned in this part of the cross-interrogatory except that I believe the requisite settlement duty or condition had been complied with before seventeen hundred and sixty-two, and was legally sufficient at that time, and continued effectively protective against the law of reunion, even if that law had afterwards existed under the British government, which is not the case, until the withdrawal of the lands from the jurisdiction of the French laws of Canada.

I cannot undertake to express any belief as to those negative qualifications being applicable to the reunion of these lands in Michigan since the treaty, nor of their present liability to reunion under the special French arrets and declaration, which ceased to exist at the cession and could not have applied even in French Canada. I apprehend that those dead laws form no part of the municipal law of Michigan nor of the general or public law of the United States.

All these inquiries as to reunion appear to be inapplicable in this case, inasmuch as they are predicated upon a state of facts alleged to be of present existence, but having reference to a system of law which has ceased to exist for a hundred years, and which could have no possible jurisdiction in Michigan, where the lands are situated; a legal system, moreover, whose
784 possible existence, whatever it might have been, has been absolutely abolished by the provincial abolition of seignorial tenure act of eighteen hundred and fifty-four.

The will of the crown had no operative power to effect reunion under the arrets of seventeen hundred and eleven, number one, and seventeen hundred and thirty-two, and the declarations of seventeen hundred and forty-three. The case of the reunion of the province of Acadia was peculiar and exceptional and offers no precedent. The royal arret of reunion of Acadia was rendered in seventeen hundred and three by the (conseil d'etat du roi, by the) king's counsel of state at Paris, acting judicially, not by the mere royal will, and before the promulgation of the general law of the arret of seventeen hundred and eleven, number one; the original grant was of a province of fifty leagues in front by an unascertained depth, which had been made to Latour in sixteen hundred and sixty-three, in the infancy of the French colony, by the great proprietary company of the Indies, to whom Canada had been granted, but who were unable to exist, and whose rights had been transferred to the king in sixteen hundred and seventy-four; the grantee had died in the mean time, leaving only creditors, his son-in-law, D'Arpentigny, among the number who was unwilling to take possession without a regrant, but who offered to improve it if regranted.

785 A regrant of a part was made by the intendant in sixteen hundred and seventy-two of six leagues square, but contentions as to the right of property in the province were brought judicially before the king's council in Paris, whereupon the council rendered two judicial arrets, one in sixteen hundred and eighty-two and another in seventeen hundred, and thereupon the Duke de Vendome and other claimants of Acadia, as their property, filed objections by regular oppositions to those arrets, which, after contestation and discussion, were finally overruled by the decree of the council of state, not the will of the king, in seventeen hundred and three, which, among other things, ordered the reunion of the province of Acadia; but even that arret or decree of the conseil could not have effect until after its acceptance and registration by the superior council of Quebec, which were had on the sixth of May, seventeen hundred and four.

This case cannot surely be cited as a precedent for reunions under the arret of seventeen hundred and eleven, which required the judgment of reunion to be decided by the local tribunal. The will of the crown had ceased

to have direct operation before its own legislative act of seventeen hundred and eleven, number one.

The commission of the intendant, Bigot, constituted him the chief
786 judicial officer in the colony, holding his office at the pleasure of the crown certainly, but exactly in the same manner as the other judges in France were commissioned, and as the judges of England, and, I apprehend, those also of the crown colonies of the United States, all of whom at that time were appointed during pleasure to administer the existing laws. His office was to administer the existing laws that were within his attributes, to judge all matters, as well civil as criminal, agreeably to "our edicts and ordinances and the custom of Paris," &c., &c., his judgments to be executed as arrets of the royal courts; to assist at the judicial and administrative sessions of the superior council of Quebec, to make laws of police for the colony sovereignly, and in the last resort to act jointly with the governor in the grants of land, and with him jointly to compose the land or terrier tribunal, to adjudicate upon reunions or forfeitures of lands, &c., &c.

The commission of the governor or lieutenant general was also during pleasure. His duties were executive, administrative, and military; he presided the superior council, acted jointly with the intendant as to the grants and reunions of lands as stated above, directed military and executive matters, and reported to the king, &c., &c.

I have looked upon the said judgment of tenth of May, seventeen hundred and forty-one, and the last paragraph thereof, as mentioned in this part of this cross-interrogatory; the judgment is not a declaration of the
787 will of the crown; the terms "the good pleasure of the crown" are incorrectly shaped, as having reference to the judgment pronounced, whilst in truth it referred to the reservation of the right by the governor and intendant as the land-granting board, not as the land tribunal, of reunion, to regrant the forfeited lands to the same grantees at a subsequent period, to take effect under the pleasure of the crown like any other grant of land made by them.

I have already stated that the will of the crown, as such merely, could not operate or effect the reunion of any seignory; the judgment of the tribunal was the judgment of a court of justice having special attributes, and was subject to appeal, in the first instance, to the court of the superior council of Quebec, and finally to the king in council; the judgment was in no sense the formal declaration inquired of.

The Chevalier de Repentigny was in Canada up to seventeen hundred and sixty-four; his wife and son Gaspard did not leave Canada until seventeen hundred and sixty-six, between which time and seventeen hundred and ninety-four, it is my belief, but I do not know the fact, that neither the chevalier nor his son, the only persons interested in his moiety, up to seventeen hundred and ninety-four resided in Canada, nor did they reside in the United States between seventeen hundred and eighty-three and eighteen
788 hundred and sixty-two.

James Caldwell and Arthur Noble, interested in the De Bonne share, did reside in the United States in the interval between seventeen hundred and eighty-three and eighteen hundred and sixty-two. James Caldwell resided at Albany from before seventeen hundred and eighty-three until his death, in eighteen hundred and twenty-nine; and Arthur Noble was resident at Nobleborough at the date of the deed of seventeen hundred and ninety-eight until his return to Ireland. I cannot precise the period, but believe it was eighteen hundred and four or eighteen hundred and five.

I do not know and cannot testify as to the inquired of facts of the first dispossession of those through whom the petitioners claim to derive, but I believe that they were dispossessed wrongfully.

I have already in my answer to the last direct interrogatory referred to the one hundred and thirteenth article of the custom. Its translation is as follows: "If any person has enjoyed and possessed a hereditament or rente by just title and in good faith by himself and his predecessors, in whose rights he is, freely and without molestation for ten years, those having rights in the land, namely, the owner, &c., being residents within the same
789 jurisdiction, or for twenty years, those having just rights being out of such jurisdiction, and who shall be of age and unprivileged, he acquires prescription of the said hereditaments or rente."

This article requires, as applicable to lands in Canada, special qualities to give it effect; first, a civil, not a natural possession; second, an uninterrupted continuance of possession during the time prescribed by the custom; third, a just possession, *animo domini*, of the thing possessed, with the assured belief of being the owner and consequently proceeding from a just title capable of transferring the property of the thing to the holder, such as purchase, legacy, donation, &c., for, as Prothier says, "on ne peut pas se croire avec fondement proprietaire d'une chose quion possede in vertu d'un titre qui n'est pas de sa nature translatif de propriete, ni d'une chose dont ou s'est empare sans titre," "for we cannot assuredly believe ourselves to be the owner of a thing which we possess by a title which cannot pass the property in it, nor of a thing which we have taken possession of without title." The custom in express terms requires a just title, but the respondents do not come within its terms, having neither just title nor good faith.

The article, as a Lower Canada municipal law of real property lying within its jurisdiction, can only apply to lands in Lower Canada.
790 Since the treaty of seventeen hundred and eighty-three it has not applied to lands in the territory of the United States, nor since seventeen hundred and ninety-one to lands in Upper Canada, nor can it support or sustain any alleged rights of the United States according to the state of facts alleged in the said petition or otherwise.

I know nothing and can testify nothing in what manner the respondents came into possession of the said lands comprised in the said seignory. The act of Congress of eighteen hundred and sixty admits their illegal possession of those lands.

The translation of the one hundred and eighteenth article is as follows: "If any person has enjoyed, used, or possessed a hereditament or rent for thirty years continuously by himself and his predecessors justly, publicly, and without molestation, though he has no title, he acquires prescription against persons having rights who are of age and unprivileged." This article is also a Lower Canada municipal law for lands situated in Lower Canada, and, since the treaty of seventeen hundred and eighty-three, has no applicability to lands in Upper Canada or the United States.

The said state of alleged facts has no connection with the law of this article, nor can it avail to the respondents to support or sustain any
791 alleged rights which they may claim over the said lands in Michigan; prescription is a law of the place where the lands are situated, and not of the place of the contract. The questions in this cross-interrogatory upon the matter of prescription are conceived in error; they are apparently predicated upon the mistake of believing that the prescription of the French Canadian law is part of and of the nature of the contract, whilst, on the contrary, it forms no part of the contract itself, but merely acts upon it *ex post facto* in case of a suit or proceeding at law.

As to the nature of the one hundred and thirteenth and one hundred and eighteenth articles of the custom, with reference to the crown of Great Britain, upon the said lands, supposing them to be in Canada, the former article can have no application whatever, inasmuch as the crown, if a pre-

scriber and dispossessor, would require just title and good faith as any other individual possessor, neither of which the crown could show; and the latter was also inapplicable, because the crown being suzerain and sovereign could not *ex mero motu* set aside its own title, and acquire another by mere possession. The crown cannot act otherwise than by matter of record,
namely: a decree of forfeiture or by escheat first obtained. The
792 crown as sovereign could not set up such a plea in bar, especially in
the state of facts alleged, in the face of an act of Parliament (act of Congress) of eighteen hundred and sixty, which required the petitioners only to establish their title to the said lands.

I have looked upon the said fourth article of the said treaty of February, seventeen hundred and sixty-three, and with reference to this part of the interrogatory, the only persons who, at that date and for eighteen months after the ratification of the treaty, represented the original grantees, were the said Pierre Amable de Bonne, as representing his father, and the Chevalier de Repentigny himself in his own rights as they were at the capitulation and cession of eighth September, seventeen hundred and sixty, and at the date of the treaty of cession, the third of February, seventeen hundred and sixty-three. The former De Bonne was a British subject by the conquest and cession, and was not an alien, nor so considered or regarded by Great Britain. The latter, however, continued to be a French subject. Neither of them parted with their estates within the said period of eighteen months, but the former did so in seventeen hundred and ninety-six, the latter not at all. The successor to the former was James Caldwell, the purchaser, who was a citizen of the United States, the successor to the latter after his death, in seventeen hundred and eighty-six, was his son
793 Gaspard, born in French Canada, but at the time of his succession a
French subject. By the French laws of Canada in force between seventeen hundred and sixty-three and seventeen hundred and eighty-three, and established as the laws of Canada by the imperial act, fourteenth George the Third above mentioned, aliens could not devise nor take by devise, nor inherit, but by themselves they could hold lands during that interval. Moreover, no act of devise or succession or inheritance as to either of the said proprietors had occurred, and therefore the disqualification of want of inheritable blood did not arise. I have had the desired regard to the said cases of Donegani *vs.* Donegani, and Pacquet *vs.* Gaspard, which do not apply—the land in those cases lying in Canada; whereas those of the said De Bonne and De Repentigny were lying in Michigan by the mere effort of the treaty of seventeen hundred and eighty-three. Upon the whole it is not the case that the said shares of either the said Pierre Amable de Bonne or of the said Chevalier de Repentigny in the said seignory escheated to the crown. No escheat was attempted, and no record of such escheat exists.

To the fourteenth cross-interrogatory he says: No reliefs were due under the law of Canada on successions by inheritance, or any other
794 besides the quints. It matters not whether the inheritance was direct or collateral.

To the fifteenth cross-interrogatory he says: I cannot say where the said original quitclaim is. I never saw it. I heard in 1862, at Washington, of its having been filed in the offices of Congress with the memorials above mentioned presented to Congress.

To the sixteenth cross-interrogatory he says: The map, of which the said paper writing certified by said "W. B. Lindsay" is a copy, was made for the provincial government by the topographer and draftsman, Pierre Louis Morin, who had been sent to Paris by and on behalf of the provincial government to make a collection of the ancient French documents having

relation to the colony during the French time; so the said map was copied by him and deposited with other provincial documents among the archives of the provincial government from whence it cannot be removed. The original map is in the archives of the French government in the bureau of war at Paris, and is not allowed to be removed therefrom. Personally I know nothing of the particular matters of fact in connection with the said map as inquired of in this cross-interrogatory. I have every reason to
795 believe that the said copy of map in the possession of the provincial government is a true copy of the original, and I know that it is preserved and considered as a public document by the provincial government, and I also believe that the said original does contain the said particulars as shown in the said copy certified by said "W. B. Lindsay." I have not seen the said original map. Franquet was a chief engineer officer in the service of the French king. I do not know of what authority the said original map was prepared, but being so prepared by Franquet in the course of his official duty and transmitted by him to the king with his other maps and plans, I assume that he prepared it by authority. I cannot say if it was made from actual survey or not. I presume that as a good draftsman and surveyor he would have no difficulty in locating the said extremities inquired of in this cross-interrogatory, as he has done. The grant being a square, and the front and one side of the square being given in the grant no difficulty would appear to exist in his way to the locating of the other side lines. I am not aware of any other authority for his so locating the said points; there may be such authority, but I am not sufficiently skilled as a draftsman or surveyor to state any other.

To the seventeenth cross-interrogatory he says: I have already stated
796 in my answer to the direct interrogatory all I know or have heard respecting said Cadotte except what I have recently learned from a son-in-law of his, with whom I have spoken, one Joseph La Riviere, living at the parish of L'Assomption, at a considerable distance from this city, who is blind and infirm of body and unable to be brought to Montreal for examination under this commission. He states himself to be eighty years of age, but is of sound mind and memory. He was a voyageur from the age of sixteen, and went up to the Indian countries with the fur companies, and often stopped at the said Sault Sainte Marie in passing to Lake Superior. At the age of twenty-five or twenty-six he married Marie, a natural daughter of said Jean Baptiste Cadotte. He never saw the said Jean Baptiste, but knew his three sons, Jean Baptiste, Michel, called the gros or big Michel, and Augustin. There were two natural daughters, the younger one of whom, Marie, he married. The elder, Angelique, married a Canadian voyageur of the name of Lacombe, who brought her down to his parish of Achigan, in the seignory of Lachigan, belonging to the De Repentigny family, where, upon his death, she again married one Pettier, and survived him, leaving a son now living. Marie, the second daughter, had been previously married to one John Dease, a fur trader in those countries, upon whose death,
797 soon after their marriage, she came to Achigan, to her sister where Lariviere married her. La Riviere knew from what he heard from his wife and sister-in-law, and from the sons of said Jean Baptiste, that he had a house and a large piece of land at Sault Sainte Marie; that he had gone up their with the first French troops, and had settled there. That he took a farm and raised corn, oats, and potatoes. He made and trafficked in large quantities of maple sugar, and also traded in furs and peltries. Jean Baptiste had been twice married, at least had two wives. By the first he had the said three sons, with two daughters, who died young. By the second he had Angelique and Marie. His second wife, after his death, married a voyageur, Ducharme Nez Rouge (Red Nose.) Gros Mi-

chel's children are now settled at the Calumet Island, in the Ottawa River.

To the last cross-interrogatory he says: I do not know, nor can I set forth any other matter or thing for the benefit of the said respondents, than what I have already set forth in my previous answers to the several direct interrogatories and to the several cross-interrogatories that have been submitted to me in virtue of the said commission in this cause.

To the first additional cross-interrogatory he says: Pothier's treatise of succession is such a work as inquired of. The rights of inheritance
798 of real property were not changed or altered by the mode of its acquisition or the source of its derivation to the intestate.

To the second additional cross-interrogatory he says: That the real property under the coutume was either propre or acquet, or conquet. Its first acquisition by an acquerer makes it an acquet purchase when made by husband and wife during the time of the marriage community it is a conquet, joint purchase. Its transmission to the immediate heir gives it the character of a propre descent; in the first inheritor it is a propre naissant, in his heirs a propre ancien. The said seignory would be a propre in the descendants of the original grantees if held by them.

To the third additional cross-interrogatory he says: The rules of descent in France under its present laws are similar, except in a few trifling particulars, to the French laws of descent for Canada. The common law rule of descent as applicable to real estate in Lower Canada is as follows: In a direct inheritance the children of the intestate acquirer succeed to the exclusion of all others and take per capita. If there are grandchildren they, as representing their deceased parent, take with their uncles' and aunts' per stirpes. If there are no descendants the collateral brothers and
799 sisters, and their children by representation, take the propres among themselves by stirpes, the ascendant's father and mother take the acquets per capita; but so that the canon paterna paternis materna maternis is observed, namely that property coming from the paternal or maternal side or line, as the case may be, must continue in that particular line.

There is no inheritance from husband to wife, and *vice versa*, except when no relations whatever of the intestate exist.

As regards the said seignory the petitioners De Repentigny, the grandchildren of the said Gaspard, represent him, and are his direct lineal heirs.

To the fourth additional cross-interrogatory he says: The three sons of Gaspard, by common law, took each an equal portion of the estate. In seignorial estates the eldest-born son has a large portion by "droit d'ainesse"—right of priority of birth—namely, one half, and his two brothers each one quarter.

By the death of Gaspard, in eighteen hundred and eight, his three sons inherited *per capita*, each for his share, and were unpartitioned proprietors of the tract, proprietaires par indivis. By the death of Theodore, in eighteen hundred and eleven, intestate and childless, his undivided share accrued to his surviving brothers, Louis and Camille. Upon the death of Camille
800 his children succeeded to his share, and, as representing their father, were unpartitioned proprietors of the tract with their uncle, Louis, upon whose subsequent death, intestate and childless, his share accrued to his neices by succession, who thereupon became unpartitioned proprietors of the entire undivided moiety of the concession of their great-grandfather, the said Chevalier de Repentigny, and are now the sole parties entitled to inherit the real estate of their grandfather Gaspard.

The widow of Gaspard and mother of Camille and his two brothers took no part, share, or interest in the real estate left by either of her deceased

sons, and could vest none in her second husband. A B could acquire no right to the said estate as against the said three daughters.

By the law of the coutume and of France heirs are seized by law of the succession of the deceased at and from the moment of its being opened by his death, the right of possession that he had continues uninterrupted in the persons of his heirs as if there had been no interval, and independent of the fact of actual possession, *eadam persona cum defuncto*, and so the heirs transmit the estate to their heirs; non-actual possession makes no difference in their right of succession.

If the land were in Canada and all the parties, including Gaspard,
801 were aliens, the land would have reverted to the crown only upon failure of legally inheritable relations, however remote, of the original grantee, the Chevalier de Repentigny.

This supposition and the interrogatory based upon it are idle, the land in controversy being subject to the law of descent in force in Michigan, and could have had no relation to the rights of the crown of Great Britain.

To the fifth additional cross-interrogatory he says: I have already explained that Camille became lawfully siezed of one half of the said share, consequent upon the death of his brother Theodore The said Camille was not sole heir-at-law of Louis L. de Repentigny, but his three daughters were such sole heirs-at-law. If the lands had been in Canada, he, as a French subject, could not have inherited or held them by succession; but the lands are in Michigan, and his tenure of them would be governed by the law of that State.

To the sixth additional cross-interrogatory he says: The question has no relation to the laws of Canada. The said quitclaim deed, I apprehend, *ipso facto* transferred all the grantor's right to and vested the property transferred thereby in the vendee.

To the seventh additional cross-interrogatory he says: From the terms of this interrogatory and the insufficiency of the facts stated therein as
802 to the nature of the occupancy, I am unable to say what ground of defence could be urged under the law of Canada.

To the eighth additional cross-interrogatory he says: Under the supposition contained in this interrogatory the petitioners would have a remedy by a writ of right returned into the superior court upon the ground of the petitioners' title and right of property never having been legally divested from them and of their wrongful and tortious dispossession in bad faith, established in that particular by the act of the legislature which had obtained the sanction of the crown itself, assuming the act of Congress to be as an act of Parliament, binding upon the crown.

(Signed) W. BADGLEY.

Sworn and subscribed before me, at the city of Quebec, this fourth day of May, A. D. one thousand eight hundred and sixty-three.

(Signed) J. J. C. ABBOTT, *Comm'r.*

I, the undersigned, the Honorable John J. C. Abbott, of the city of Montreal, in the province of Canada, solicitor general, one of the commissioners appointed in the commission hereto, do hereby certify that the foregoing depositions of Charles Paulet Rotton, Pierre Louis Morin, Joseph Bouchette, and the Honorable William Badgley were severally written down by
803 George Nall, of the said city of Montreal, gentleman, in my presence and that of the respective witnesses, and that they were severally signed in my presence, and that before proceeding to testify each witness took the oath mentioned in the commission hereto attached.

Dated at the city of Quebec this fourth day of May, A. D. 1863.

(Signed) J. J. C. ABBOTT, *Comm'r.*

807 *Exhibits referred to in the foregoing depositions of the Hon. Wm. Badgley.*

Exhibit A, certificate of 2nd marriage of the mother of P. A. de Bonne; not filed.

Exhibit B, certificate of 1st marriage of P. A. de Bonne; not filed.

Exhibit C, certificate of 2nd marriage of P. A. de Bonne; not filed.

809 EXHIBIT D.

Letter—Langan to De Bonne, 8th April, 1796.

DEAR SIR: I received the copy of your title deed to the undivided half of the seignory of the Sault St. Marie, and I beg you to be assured I shall take immediate steps towards effecting a sale to the best advantage for your interest. When I talked of £1,800 as the price you asked, I calculated at 4*d.* the English acre, but it seems you meant acres of French measure (arpents.) Had I not great reason to believe I can get you the sum you ask for it, I would by all means advise you to take the £1,500 for it, for indeed it is far above anything I could ever contemplate myself as the value of a seignory so very distant from any settlement.

I shall write to the States by the Burlington post on Sunday next, and I shall describe the property in the best manner I can to insure success, and as I shall offer it at 4*d.* the arpent I will of course stand pledged to them for perfecting the deed of sale should the people I write to accede to my proposal.

From the measures I shall take and my acquaintance with the New York land speculators, I have little doubt of succeeding to your wishes, and I am decidedly of opinion that this is the favorable moment for selling property while the present phrenzy lasts. Men's ideas respecting land is wound up to a great height at this time, but in my opinion the delirium won't last long. However, in this instance, it shall be my business to push mat-
810 ters without delay, and I hope by the middle of next month to be able to tell you I have diposed of it.

Mr. McKindlay tells me he received the returned blank deed from Mr. Crawford. He says he will be content with your guarantee for your own proportion, and Mr. Vassals for the half lot he sold you. I fancy Mr. McKindlay writes to you.

I am, dear sir, with much esteem, very much yours,

(Signed) P. LANGAN.

Montreal, 8th April, '96.

P. A. DE BONNE, Esq.

811 EXHIBIT E.

Letter—Langan to De Bonne, 27 June, 1796.

DEAR SIR: At length I have received two letters from my friends in New York and Albany in answer to the several letters I had written on the subject of your seignorie. At New York they entirely decline any purchases in this country, but I have been more fortunate in Albany in making a conditional sale for you, which if you agree to you will have the goodness to let me know by return of post, that I may write to Albany by the post that will leave this on Sunday morning.

The terms I have brought the intended purchasers to (for there are two of them) is 3½*d.*, Hali'x curr'y, the acre, one half the purchase-money to be paid the 1st October next, and the other half the 1st Oct'r, 1797, without interest.

As I have taken the business in hand for you, I assure you I am extremely

happy to be able to bring it to that point, for really and truly I think it a great price, everything considered, and I have interested myself much in effecting it thus far; at the same time I beg you will not imagine that I say this with any intention of enhancing a merit I may have in it, and as my principal inducement in the beginning was to be of use to you, and that the price falls short of your expectations you may allow me as little com-
812 mission as you please; for as you limited me to 4*d.* the acre, I could not expect nor do I wish that you would allow me 5 per ct.

I count this sale the more fortunate for you at this time as the four principal land speculators in New York have all failed within the last five weeks, and in a short time the property that those people have bought will come to the hammer and be sold for half the price they gave for it; in short, the bubble has burst in many parts of the U. States, and those who have made sales are lucky.

You know that Mr. De Lanandieu's sale has come to nothing, as I always said it would, and Capt'n St. Ours refused a handsome price from me when it was in my power to have paid him. Now that power is taken from me, and I fancy it will be a long time before he meets with such another offer. But thus it is by too great circumspection and caution we oftentimes miss a good bargain. And now that I have done with this, allow me to make a proposal to you. It is this: That you endeavor to find out the heir to the other half of the seignorie of St. Marie and try to purchase it from him in your joint account and mine, and as I imagine you would get it from him for a small sum I think we could make something handsome by it; and if we make the purchase it will be my business to get it off our hands. Your own discretion will point out to you what sum to offer should my plan
813 meet your ideas on the subject.

I am, dear sir, with much esteem, truly yours,

(Signed) P. LANGAN.

Montreal, 27th June, '96.

P. A. DE BONNE, Esq.

815 EXHIBIT F.

Exemplification of record—De Bonne vs. Langan.

In the superior court for Lower Canada.

PROVINCE OF CANADA, LOWER CANADA,
District of Montreal, to wit:

Transcript of all the rules, orders, and proceedings found in the record or register of the heretofore court of king's bench of the district of Montreal in a certain cause adjudged in said court, and wherein the Honorable Pierre Amable de Bonne, one of the justices of the court of king's bench for the district of Quebec, was plaintiff and Patrick Langan, residing at Montreal, esquire, was defendant.

District of Montreal, court of king's bench.

THE HONORABLE PIERRE AMABLE DE BONNE, one of the justices of the court of king's bench for the district of Quebec, plaintiff,
vs.
PATRICK LANGAN, residing at Montreal, esquire, defendant.
} No. 29.

THE 1ST JUNE, 1798.

Present: The Honorable Mr. Justice Walker, the Honorable Mr. Justice Panet, the Honorable Mr. Justice Ogden.

816 Edward W. Gray, sheriff of the district of Montreal, returns before this court the writ of summons issued in this cause, with the declaration thereunto annexed.

Louis C. Foucher, esquire, appears for the plaintiff, and files a list and one exhibit.

Mr. Russel, advocate, appears for the defendant, and moves that the rule to file an exception in this cause may be extended to the fourth instant.

The court grant the motion by consent of the plaintiff's counsel.

MONDAY, *the 1st October*, 1798.

Present: The Honorable the Chief Justice, the Honorable Mr. Justice Walker, the Honorable Mr. Justice Panet, the Honorable Mr. Justice Ogden.

It is ordered, on motion of the plaintiff's counsel, and by consent of the defendant, that this cause be discontinued without costs.

We, the joint prothonotary of the superior court for the district of Montreal, the legal custodians of the record of proceedings in the above intituled cause, number 29, do certify that the foregoing is a true copy and transcript of the proceedings in the said cause, and that the several paper writings annexed hereto under the numbers one, two, three, four, five, and six, and certified by us, are true copies of the original papers which compose the said record.

817 Given under our official hand and signature, at the city of Montreal, this day of , 1861, and is sealed with the seal of the said court.

[SEAL.] (Signed) MONK, COFFIN & PAPINEAU, *P. S. C.*

819 *Number one.*

George the Third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, and so forth, to the sheriff of the district of Montreal, in the province of Lower Canada, greeting:

We command you that you summon Patrick Langan, esquire, to be and appear before us, at the court-house, in our city of Montreal, on Friday, the first day of June next, to answer the Honorable Pierre Amable de Bonne, one of the justices of our court of king's bench for the district of Quebec, of a plea as contained in the annexed declaration, and have you then there this writ.

Witness the Honorable James Walker, one of our justices of our said court of king's bench, at Montreal, this twenty-ninth day of May, in the thirty-eighth year of our reign.

(Signed) SAVEUSE DE BEAUJEU.

(Word obliterated null.)

True copy.

MONK, COFFIN & PAPINEAU, *P. S. C.*

820 By virtue of this writ, to me directed, on the twenty-ninth day of May last, I caused the within-named Patrick Langan, esquire, to be summoned to be and appear at the day and place within contained to answer as the said writ demands and requires, by delivering a copy of the said writ and of the declaration thereunto annexed to the said Patrick Langan, in the town of Montreal, as within I am commanded.

Montreal, 1st June, 1798.

(Signed) EDW'D WM. GRAY, *Sheriff.*

True copy.

(Signed) MONK, COFFIN & PAPINEAU, *P. S. C.*

821 *Number two.*

Translation.

Court of king's bench, June term, 1798.

PROVINCE OF LOWER CANADA, *district of Montreal.*

THE HONORABLE PIERRE A. DE BONNE, esquire, plaintiff,
vs.
PATRICK LANGAN, esquire, defendant.

The Honorable Pierre Amable de Bonne, esquire, one of the judges of the court of king's bench for the district of Quebec, by Louis Charles Foucher, his counsel, plaintiff, against Patrick Langan, esquire, living at Montreal, defendant, declared that by act passed at Quebec before Charles Stewart, notary public, and witness on the twelfth day of July, one thousand seven hundred and ninety-six, did sell unto James Caldwell, esquire, of the city of Albany, in the State of New York, one undivided moiety of the fief or seigneurie of St. Marie, or Ste St. Marie, containing six leagues in front by six leagues in depth, adjoining the river which separates the two lakes, with the right of hunting and fishing, and other privileges thereto belonging, as it is explained in the said act, which will be filed with these presents; which sale, for the considerations hereinafter mentioned, the defendant and William Caldwell, of the said city of Albany, should have accepted for the said James Caldwell, and in consequence of which should have promised and should be themselves engaged by the said act to pay to the defend-
822 ant, his heirs, and assigns, the sum of fifteen hundred and seventy-seven pounds two shillings and three pence sterling, in the manner following: that is to say, the sum of two hundred and twenty-five pounds sterling at the execution of these presents, which sum the said defendant should have in effect then received, and give him quittance for so much; five hundred and sixty-three pounds eleven shillings and three half pence the first of October following, that is to say, the first of October in the year 1796, and the sum of seven hundred and eighty-eight pounds eleven shillings and three half pence sterling, in full payment of the said sale, on the first of October, 1797; by virtue of which promise, and by the acceptance of this by the plaintiff, the said defendant and the said William Caldwell have become personally and jointly bound to the payment of the sums aforesaid, and the interest due thereon, *ex natura rei*, from the day of the execution of the said deed of sale, and on the execution of part of the said promise should have paid on the 15th day of July last, to said plaintiff, the principal sum of five hundred and sixty-three pounds eleven shillings and three half pence for the term of payment expired the first of October, 1796, and nineteen pounds four shillings and four pence on account of interest, although on the said fifteenth of July last they owed for interest eighty-one pounds fifteen shillings and eleven pence sterling, so as that they then remain and are this day still jointly chargeable with sixty-two pounds eleven shillings and seven pence sterling, or the sum of sixty-nine pounds ten shillings and seven pence money of this province, of interest, as well as with the last term of payment, either of the sum of seven hundred and eighty-eight pounds
823 eleven shillings and three half pence sterling, or eight hundred and seventy-six pounds three shillings and five pence present currency, making together nine hundred and forty-five pounds fourteen shillings present currency, with interest, besides, upon the said sum of eight hundred and seventy-six pounds three shillings and five pence, reckoning from the 13th day of July last until actual payment, which principal and which interests

the said defendant would refuse to pay the said plaintiff, although he is obliged and held to payment of them, and which he has been often requested to do.

For these reasons, the said plaintiff, in conclusion, requests that a summons may issue to the said defendant to appear in court in the chamber of hearing, in Montreal, on Friday, the first of June next, at ten in the morning, to see himself condemned for the aforesaid reasons to pay him the said sum of nine hundred and forty-five pounds fourteen shillings, present currency, with interest on eight hundred and seventy-six pounds three shillings and five pence from the said 15th of July last until actual payment, and costs.

Montreal, 26th May, 1798.

For the plaintiff—

(Signed) L. C. FOUCHER, *Adv.*

Let the defendant be summoned as it is requested.

Montreal, 26th May, 1798.

(Signed) J. WALKER, *J. K. B.*

A true copy.

(Signed) MONK, COFFIN & PAPINEAU.

825 *Number three.*

Translation.

Montreal, court of king's bench, June term, 1798.

THE HONORABLE PIERRE AMABLE DE BONNE, plaintiff,
vs.
PATRICK LANGAN, esquire, defendant. } No. 29.

List of papers and productions on the part of the plaintiff in this cause.

A.—Declaration of the plaintiff, dated 26th of May, 1798, and summons annexed.

No. 1.—Contract of sale made by the plaintiff with James Caldwell, dated the 12th day of July, 1796.

A true copy.

Montreal, June 1st, 1798.

For the plaintiff.

(Signed) MONK, COFFIN & PAPINEAU.

Number four.

Note.—Here follows a copy of the notarial deed from De Bonne to Caldwell, dated 12th of July, 1796, same as Exhibit H, [Badgley,] post —.

827 *Number five.*

THE HON'BLE P. A. DE BONNE, pl'ff,
vs.
PATRICK LANGAN, Esq., def'dt.

The defendant's counsel moves that the rule to file an exception *dilatoire* in this cause may be extended to Monday, the 4th inst.

(Signed) ROB'T RUSSEL.

1 June, 1798.

True copy.

(Signed) MONK, COFFIN & PAPINEAU.

829 *Number six.*

Translation.

Montreal, court of king's bench, October term, 1798.

THE HONORABLE PIERRE AMABLE DE BONNE, plaintiff,
vs.
PATRICK LANGAN, esquire, defendant.

The solicitor general, counsel for the plaintiff, moves that he be permitted to discontinue the present action without costs.

For the plaintiff—
(Signed) L. C. FOUCHER, *Counsel.*

Montreal, October 1st, 1798.

A true copy.
(Signed) MONK, COFFIN & PAPINEAU.

831 EXHIBIT G.

Certificate of clerk of supreme court Quebec, as absence of original deed of 12 *July*, 1796, *since* 1810.

"12th July, 1796."—Sale, P. Amable de Bonne favor P. Langan and William Caldwell."

We, the undersigned, joint prothonotary of the superior court in and for the district of Quebec, in the province of Lower Canada, do certify that we are the legal and only depositaries of the notarial records and documents executed by and before the late Charles Stuart, esquire, in his lifetime notary public of the said city of Quebec; that the foregoing is a true copy of the original entry in the notarial register of the said Charles Stuart, as such notary public, of the original minute or deed executed by and before him, the said notary public, between the parties and at the date as mentioned in the said entry, and that the said original minute or deed is not among the said records and documents deposited in our office, and has not been since the year 1810.

In testimony whereof, we have affixed hereto the seal of the said court, at Quebec, this twentieth day of March, in the year of our Lord one thousand eight hundred and sixty-one.
[L. S.]
(Signed) BURROUGHS & FISER, *P. S. C.*

833 EXHIBIT H.

Notarial deed of sale.—De Bonne to Caldwell, 12 *July*, 1796, *with the discharge for the purchase-money endorsed thereon, and dated* 30*th June*, 1798.

Before me, Charles Stewart, public notary, duly admitted and sworn for the province of Lower Canada, residing in the city of Quebec, and witnesses hereunto subscribing personally, came, appeared, and were present the Honorable P. Amable de Bonne, one of the judges of his majesty's court of king's bench for the district of Quebec, in the said province of Lower Canada, Patrick Langan, esquire, of the city of Montreal, in the said province of Lower Canada, and William Caldwell, of the city of Albany, in the State of New York, in the United States of America, at present of this city of Quebec; which said P. Amable de Bonne, for and in consideration of the sum of one thousand five hundred and seventy pounds two shillings and three pence, sterling money of Great Britain, to be paid in manner and at the term and periods hereinafter mentioned, stipulated, and con-

tained, did, in presence of me the said notary, and the witnesses hereunto subscribing, and hereby doth fully, clearly, and absolutely grant, bargain, sell, assign, transfer, and set over unto James Caldwell, of the city of Albany, in the State of New York, esquire, with guarantee against all incumbrances, dowers, mortgages, evictions, rights, debts, claims, and demands whatsoever, all that undivided half of the fief or seignory called St. Marie or Sault St. Marie, the whole containing six French leagues in front by six leagues like measure in depth, joining the river which separates the two lakes, together with the rights of fishing and hunting, and all other rights,
834 privileges, and advantages appertaining and belonging thereto, without any restriction or reservation whatsoever, saving and excepting all those privileges and reservations specified in the original grant or concession of the said fief Sault St. Marie; which said property appertains and belongs to him, the Pierre Amable de Bonne, by succession, by the death of his father, —— de Bonne, esquire, formerly captain in the regiment of Conde, and which was acquired by him by a grant or concession from Messrs. le Marquis de la Jonquiere, governor and lieutenant general in New France, and Francois Bigot, then intendant, bearing date the eighteenth day of October, in the year of our Lord one thousand seven hundred and fifty, as appears by the said deed of concession recorded in the register's d'intendant concession, en fief No. 7, 8, 9, page 68, in the register's office of enrollments at Quebec, and which said deed of concession of the whole of the said fief called Sault St. Marie, granted to the said Captain de Bonne and the Chevalier de Repentigny, was afterwards ratified and confirmed in France by his majesty, as appears by a brevet of ratification bearing date the twenty-fourth day of June, one thousand seven hundred and fifty-one, (at present delivered up, together with a certified copy of the deed of concession, signed by George Pownal, as secretary, for the behalf of the said purchaser,) to have and to hold the said one equal undivided half of the said fief or tract of ground called Sault St. Marie, privileges, uses, and advantages here-
835 by bargained, sold, and conveyed, or intended so to be, with their each and every of their appurtenances, unto the said James Caldwell, his heirs and assigns, to the only proper use and behoof of the said James Caldwell, his heirs, and assigns, forever, as fully, amply, and extensively, to all intents and purposes, as he, the said P. Amable de Bonne, hath had or held as heir to the succession of his said deceased father, subject always, nevertheless, to foi and hommage at the Castle of St. Louis, in Quebec, together with all dues, claims, right, and privileges appertaining and belonging to his majesty of whom the same is held, and all other seignorial rights with which the same shall by law be charged or incumbered as due to his majesty, his heirs, or successors; which said grant, bargain, and sale, transfer and conveyance of the said equal undivided half of the said tract of ground or fief Sault St. Marie, with the uses, privileges, and advantages, and their and each and every of their appurtenances hereby bargained, sold, and conveyed, or intended so to be, by the said P. Amable de Bonne, for the considerations hereinafter mentioned, the said Patrick Langan and William Caldwell, for and on the part and behalf of the said James Caldwell, do hereby accept, and in consideration thereof, they, the said Patrick Langan and William Caldwell, for and on behalf as aforesaid, did and do hereby promise and engage and bind and oblige themselves to pay to the said P. Amable de Bonne, his heirs, executors, curators, administrators, and assigns, the
836 full sum of one thousand five hundred and seventy-seven pounds two shillings and three pence, sterling money, in manner following: that is to say, the sum of two hundred and twenty-five pounds sterling at the execution of these presents, which said last-mentioned sum has been, in presence of me, the said notary, and the subscribing witnesses, *been* satis-

fied, and paid to him, the said P. Amable de Bonne, the receipt whereof is by him hereby acknowledged; the sum of five hundred and sixty-three pounds eleven shillings and one penny halfpenny on the first day of October, in this present year, one thousand seven hundred and ninety-six; and the further sum of seven hundred and eighty-eight pounds eleven shillings and one penny halfpenny money aforesaid, being the balance and last payment of the said consideration money, on the first day of October, one thousand seven hundred and ninety-seven, to and for which payments, well and truly to be made, the said Patrick Langan and William Caldwell, for and on account and behalf of the said James Caldwell, did, in presence of me, the said notary, and the witnesses hereunto subscribing, bind, mortgage, and hypothecate the whole of the aforesaid mentioned and bargained premises, which said premises and undertakings the said P. Amable de Bonne did and doth hereby accept.

Thus done and passed in the office of the said Charles Stewart, in the afternoon of this twelfth day of July, in the year of our Lord one thousand
837 seven hundred and ninety-six, the said P. Amable de Bonne and Patrick Langan and William Caldwell for and on behalf of James Caldwell, as aforesaid, having to these presents first duly read in their presence and hearring according to law, and deposited in the office of the said Charles Stewart, (according to the usage and custom of Canada,) set and subscribed their names in presence of the said Charles Stewart, and the witnesses who have also hereunto set and subscribed their names.

(Signed) P. A. DE BONNE.

(Signed) MALCOLM FRASER, *witness.*
JOHN MCCORD, *witness.*
P. LANGAN.
WM. CALDWELL.
CHAS. STEWART, *Not'y Pub.*

I, Charles Stewart, public notary, for the city of Quebec, and province of Lower Canada duly admitted, do you hereby certify to all whom it may concern, that what is wrote on the three foregoing pages contains a just and true copy of the original remaining of record in my office.

In testimony whereof, I have hereunto set my hand and affixed my seal of office at Quebec, this thirteenth day of July, one thousand seven hundred and ninety-six.

(Signed) CHA. STEWART, *Not'y Pub.* [L. S.]

838 Before the notary and witnesses subscribing personally came and appeared the within designed Pierre Amable de Bonne and Patrick Langan, esq'rs, which said Pierre Amable de Bonne did and hereby of his own free will and accord confess and acknowledge to have received from the within designed James Caldwell, by the hands of the said Patrick Langan, esq'r, on the third day of July, one thousand seven hundred and ninety-seven, the sum of five hundred and sixty-three pounds eleven shillings and one penny sterling, with the interest accrued thereon to that day, and the further sum of eight hundred and twenty-eight pounds and nine pence sterling, paid to him this thirtieth day of June, one thousand seven hundred and ninety-eight, which he, the said P. A. de Bonne, declared and acknowledged before me, the said notary, and witnesses to be in full satisfaction and payment of the remaining balance of the consideration money for the within bargained premises, as mentioned and set forth in the foregoing deed, and of and from the same and every part thereof. He, the s'd Pierre Amable de Bonne, did and hereby doth acquit, exonerate, and discharge the said James Caldwell, his heirs and assigns forever. And before me, the said notary, and witnesses he, the said P. A. de Bonne, did and doth

hereby free and absolutely discharge the within mentioned seignory with which it was affected.

839 In witness whereof, the said parties have hereunto and to the minute hereof deposited in the office of the subscribing notary, this thirtieth day of June, one thousand seven hundred and ninety-eight, set their hands.

P. A. DE BONNE.
P. LANGAN.

R. RUSSELL.
JOHN BUCHANAN.
CHA. STEWART, *Not'y Pub.*

[L. S.] By his excellency Robert Prescott, esquire, captain general and governor in chief in and over the province of Lower Canada, &c., &c., &c., to all whom these presents may concern:

I do hereby certify that Charles Stewart is a notary public for the province of Lower Canada, duly commissioned and authorized as such. In consequence whereof full faith and entire credit are and ought to be given to his signature in such capacity wherever the same may appear.

Given under my hand and seal at *at* the Castle of Saint Lewis, in the
840 city of Quebec, the thirtieth day of June, one thousand seven hundred and ninety-eight, and in the thirty-eighth year of his majesty's reign.

(Signed) ROB'T PRESCOTT.

By his excellency's command:

(Signed) GEO. POWNALL, *Sec'ry.*

841 EXHIBIT I.

Draft for £250, *Caldwell in favor of De Bonne*, 10 *July*, 1796.

£250, Cy. No. 193. QUEBEC, *July* 10, 1796.

On the first day of August, next, please pay to order of P. A. de Bonne, esq., two hundred and fifty pounds curr'y, value rece'd.

(Signed) W M. CALDWELL.

On back:

Please pay Peter Stuart, esq., or order, value rece'd.

(Signed) P. A. DE BONNE.

Rece'd payment. PETER STUART.

843 EXHIBIT J.

P. A. de Bonne's receipt to Caldwell for £563 11 1.

Received of James Caldwell, of Albany, by the hands of Patrick Langan, five hundred and sixty-three pounds eleven shillings and a penny sterling, on account of a payment due to me the 1st October last, on the sale of the seigneurie St. Marie, and also nineteen pounds four shillings and four pence, same currency, in part of interest arising on the above sum.

Quebec, the 15th July, 1797.

(Signed) P. A. DE BONNE.

845 EXHIBIT K.

Letter—Noble to Caldwell, 13 *Oct.* 1790.

FORT NOBLE, *Oct'r* 15, 1790.

DEAR SIR: I was in great hopes to have seen the carpenters from Albany

yesterday, and if they have not left, that request you will despatch them to me as the disappointment will be very great if they do not come soon. I have likewise to request you will be so kind to take diet and lodging for Arthur in some good family for three months, as living at a tavern is both improper and expensive. You will oblige me to send me by the man that goes with Arthur, twenty yards of coarse linen for sacks or bags, with six packing needles and a pound of twine or coarse thread and three ropes, and any letters or newspapers that are for me.

With best comp'ts to Mrs. Caldwell, believe me, dear sir, yours sincerely,

(Signed) ARTHUR NOBLE.

Mr. JAMES CALDWELL, *Albany*.

847 EXHIBIT L.

Quitclaim deed—Caldwell to Noble, 18 *July*, 1798.

This indenture, made this eighteen day of July, in the year of our Lord one thousand seven hundred and ninety-eight, between James Caldwell, of the town of Watervliet, in the county of Albany, and State of New York, merchant, of the one part, and Arthur Noble, of Nobleborough, esquire, of the other part.

Whereas it appears by a certain notarial paper or instrument in writing, under the hand and seal of Charles Stewart, notary for the city of Quebec and province of Lower Canada, that on the twelfth day of July, in the year of our Lord one thousand and seven hundred and ninety-six, Pierre Amable de Bonne, one of the judges of the court of king's bench for the district of Quebec, in consideration of one thousand five hundred and seventy pounds two shillings and three pence sterling money of Great Britain, to be paid in manner and at the terms and periods in the said instrument in writing mentioned, did fully, clearly, and absolutely grant, bargain, sell, assign, transfer, and set over unto the said James Caldwell, with guarantee against all incumbrances, dowers, mortgages, evictions, rights, debts, claims, and demands whatsover, all that undivided half of the fief or seigneury called St. Marie or Sault St. Marie, the whole containing six French leagues in front by six leagues like measure in depth, joining the river which separates the two lakes, together with the rights of fishing and hunting, and all other rights, privileges, and advantages appertaining and belonging thereto,
848 without any restriction or reservation whatsoever, saving and excepting all other privileges and reservation whatsoever, specified in the original grant or concession of the said fief Sault St. Marie, to have and to hold the said one equal undivided half of the said fief or tract of ground called Sault St. Marie, privileges, uses, and advantages by the said instrument in writing, bargained, sold and conveyed, or intended so to be, with their and each and every of their appurtenances, unto the said James Caldwell, his heirs and assigns forever, as fully, amply, and extensively, to all intents and purposes, as he, the said Pierre Amable de Bonne, had or or held as heirs to the succession of his deceased father. And whereas by the said notarial paper or instrument in writing, it also appears that the consideration money was to be paid at certain stipulated periods, and that for the payment thereof the said bargained premises were mortgaged and hypothecated.

And whereas by a certain other notarial paper or instrument in writing, dated on the thirtieth day of June, in the year of our Lord one thousand and seven hundred and ninety-eight, endorsed on or annexed to the notarial paper or instrument first there in part recited, it appears that the Pierre Amable de Bonne had acknowledged that he had received the full consideration money aforesaid, and that he, the aforesaid Pierre Amable de Bonne, did, by the said last-mentioned notarial paper, acquit, exonerate, and discharge

the said James Caldwell, his heirs and assigns forever, of and from the same, and every part thereof, and did also freely and absolutely discharge
849 the said seignory with which it was affected, as by the said notarial paper or instrument in writing, reference being thereunto had, may more fully appear :

Now, therefore this indenture witnesseth that the said James Caldwell, for and in consideration of the sum of fifty thousand dollars, of lawful money of the United States of America, to him in hand paid by the said Arthur Noble, the receipt whereof is hereby acknowledged, hath granted, bargained, quitclaimed, aliened, and released, and by these presents doth grant, bargain, quitclaim, alien, and release, unto the said Arthur Noble, his heirs, executors, administrators, and assigns, all and singular the said undivided half part of the said fief or seignory called St. Marie or Sault St. Marie, with the rights, privileges, and advantages aforesaid, and the reversion or reversions, remainder and remainders, rents and services of all and singular the said premises above mentioned, and of every part and parcel thereof, with their and every of their appurtenances, and all the estate, right and title, interest, claims, and demands what.oever, both in law and equity, of him the said James Caldwell, of, in, and to the same, and of, in, and to every part and parcel thereof, with the appurtenances, as fully, and amply, and extensively as the said James Caldwell doth or hath held the same by virtue of the conveyance aforesaid. To have and to hold the said undivided half part of the said fief or seignory, rights, privileges, and advantages, unto the said Arthur Noble, his heirs and assigns, as fully, amply, and extensively as the said James Caldwell hath or doth hold the
850 same by virtue of the conveyance aforesaid, to the only proper use, benefit, and behoof of the said Arthur Noble, his heirs and assigns forever.

In witness whereof, the parties to these presents have hereunto set their hands and seals the day and year above written.

(Signed) JAMES CALDWELL. [L. S.]

On the back it is written: Sealed and delivered in the presence William Harrison, Thomas Cooper.

STATE OF NEW YORK, *ss:*

I, Thomas Cooper, master in chancery for the State of New York, do certify that on the second day of August, in the year of our Lord one thousand seven hundred and ninety-eight, came before me James Caldwell, known to me to be the same person described by that name in and who has executed the within deed, who did acknowledge that he did execute the same. There being therein no material erasures or interlineations, I do allow it to be recorded.

(Signed) THOMAS COOPER.

851 Exhibit M, act of fealty and homage by P. A. De Bonne.—Copy attached to the petition in this cause. See same at end, marked Exhibit I therein.

853 EXHIBIT N.

Patent from the State of New York to Arthur Noble, dated 15 *Oct.*, 1787.

The people of the State of New York, by the grace of God free and independent, to all to whom these presents shall come, greeting: Know ye that, pursuant to an act of our legislature, passed the fifteenth day of February last past, we have given, granted, and confirmed, and by these presents

do give, grant, and confirm, unto Arthur Noble, esquire, all that certain tract and township of land hereby designated by the name of Nobleborough, situate, lying, and being in our county of Montgomery, on the north side of the Mohawk River, and to the northward of a tract of land heretofore granted to Henry Glenn and others, commonly called Jerseyfield, beginning on the east shore of the Theiogo or Canada Creek, at the distance of three hundred chains, measured on a course north thirty-one degrees east, from the north bounds of the said tract of land called Jerseyfield, and runs from the said place of beginning south fifty-nine degrees east, ninety-four chains and twenty-four links; then north thirty-one degrees east, five hundred and ninety chains; then north fifty-nine degrees west, six hundred and ninety-four chains and twenty-four links; then south thirty-one degrees west, five hundred and ninety chains; and then south fifty-nine degrees east, six hundred chains, to the place of beginning, containing the quantity of eight miles square or forty thousand nine hundred and sixty acres; to-
854 gether with all and singular the rights, hereditaments, and appurtenances to the same belonging, or in anywise appertaining, excepting and reserving to ourselves all gold and silver mines, and five acres of every hundred acres of the said tract of land for highways. To have and to hold the above-described and granted premises unto the said Arthur Noble, his heirs snd assigns, as a good and indefeasible estate of inheritance forever; on condition, nevertheless, that within the term of seven years, to be computed from the first day of January next ensuing, the date hereof, there shall be one actual settlement made on the said tract of land hereby granted for every six hundred and forty acres thereof; otherwise, these our letters patent and the estate hereby granted shall cease, determine, and become void.

In testimony whereof, we have caused these our letters to be made patent, and the great seal of our said State to be hereunto affixed.

Witness our trusty and well-beloved George Clinton, esquire, governor of our said State, general and commander-in-chief of all the militia, and admiral of the navy of the same, at our city of New York, this fifteenth day of October, in the year of our Lord one thousand seven hundred and eighty-seven, and in the twelfth year of our independence.

(Signed) GEO. CLINTON.

855 Approved of by the commissioners of the land office, and passed the secretary's office the 15th October, 1787.

ROBT. HARPER, *D. Sec'y.*

STATE OF NEW YORK, *Office of the Secretary of State, ss:*

I have compared the preceding with the letters patent found recorded in Liber number twenty of Patents, in this office, at page 53; and I do hereby certify the same to be a correct transcript therefrom and of the whole of the record of said letters patent.

Witness my hand and official seal, at the city of Albany, this second day of February, 1863.

(Signed) J. WESLEY SMITH, *Dep. Sec'y of State.*

857 EXHIBIT O.

Deed from the State of New York to Arthur Noble, dated 22 *Sept.*, 1790.

The people of the State of New York to all to whom these presents shall come or may concern, greeting:

Know ye that we having inspected the records in the office of the clerk of the city and county of Albany, in the said State of New York, at the city of Albany, do find there remaining of record a certain deed or indenture in the words and figures following, to wit:

This indenture, made the twenty-second day of September, in the year of our Lord one thousand seven hundred and ninety, between James Caldwell, of the city of Albany, merchant of the first part, and Arthur Noble, late of the kingdom of Ireland, but now of North America, in the State of New York, esquire, of the second part, witnesseth that the said party of the first part, and in consideration of the sum of three hundred pounds of lawful money of the State of New York, to him in hand paid by the party of the second part, the receipt whereof is hereby confessed and acknowledged, hath granted, bargained, sold, remised, released, enfeoffed, and confirmed, and by these presents doth grant, bargain, sell, remise, release, enfeoff, and confirm, unto the said party of the second part in his actual possession, now being by virtue of a bargain, sale, and lease to him thereof, made by
856 the said party of the first part by indenture bearing date the day next before the day of the date of these presents, and by force of the laws for transferring of uses into possession, and to his heirs and assigns forever, all that certain house and *and* lott of ground situate and lying in the northermost part of the city of Albany, on the north side of Foxes Creek on Wontenbergh, called lott number twelve, bounded on the east by lott number eleven, on the west by lott number thirteen, on the south by the street, and on the north by the northermost line of the city of Albany aforesaid, containing in front and rear by the said northermost line thirty feet, and in length from the said street to the said northermost line about fourteen rod and an half, and also all that certain lott of ground situate, lying, and being in the northermost part of the city of Albany, known and distinguished by lott number thirteen on the north side of Foxes Creek on Wontenbergh, bounded on the east by lott number twelve, on the west by lott number fourteen, on the south by Wall street, and on the north by the northwest line of the city of Albany, containing in breadth in front by the street and in rear by the aforesaid northwest line thirty feet, and in length from the said street to the said line about fourteen rod and an half, all Rhineland measure, together with all and singular the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right,
859 title, interest, claim, or demand whatsoever of the party aforesaid of the first part, either in law or equity, of, in, and to the said lott of ground, messuage, and premises and appurtenances. To have and to hold the above bargained premises to the party of the second part, his heirs and assigns, for the sole and only use, benefit, and behoof of the party aforesaid of the second part, his heirs and assigns forever, yielding and paying therefore he the said Arthur Noble, his heirs and assigns, yearly and every year hereafter, on the first day of May, in every year, unto the mayor, aldermen, and assistants of the city of Albany, and to their successors, the yearly rent of twelve shillings current money of the State of New York.

And the party aforesaid of the first part, for himself, his heir, executors, and administrators, doth covenant, grant, bargain, promise, and agree to and with the party aforesaid of the second part, his heirs and assigns, that the above bargained premises in the quiet and peaceable possession of the said party aforesaid of the second part, his heirs and assigns, against all and every person or persons lawfully claiming will forever warrant and defend by these presents.

In witness whereof, the parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

860 JAMES CALDWELL. [L. S.]

Sealed and delivered in the presence of us—

JOHN MACGREGOR.

SIMON J. TOLL.

Be it remembered, that on the sixteenth day of November, one thousand seven hundred and ninety, appeared before me, Jeremiah Lansingh, one of the masters in chancery for the State of New York, Simon J. Toll, who being sworn on the Holy Evangelists of Almighty God, deposeth and saith that he saw James Caldwell sign, seal, and deliver this instrument for the purpose therein mentioned, and that he, this deponent, together with John MacGregor, the other witness, signed the same as witnesses; and I having examined the same, and finding no razures or interlineations therein, do allow the same to be recorded.

JER'H LANSINGH.

I do hereby certify the foregoing to be a true copy of the original, examined and compared with the same, the 17th day of November, 1790.

R. LUSH, *Clk.*

Which indenture was recorded in the office of the clerk of the city and county of Albany aforesaid, on the seventeenth day of November, 1790, in Book Number 12 of Deeds, page 311.

861 Exhibit P, letter in the nature of a caveat from John Sheriff to the Comm'r of the General Land Office. (See Favarger's Exhibit XLIX attached to Detroit depositions, No. 1.)

863 EXHIBIT Q.

Power of attorney, De Repentigny to wife, dated 25th March, 1759.

Translation.

I, Louis le Gardeur, esquire, Sueir de Repentigny, captain of infantry, give full and entire power to the dame Marie Magdeline de Lery, my wife, whom I expressly authorize for me and in my name to carry on, govern, and administer all my affairs of whatsoever nature they may be; to receive, from all debtors the sums which may be due us, whether by notes, obligations, contracts of constitution or otherwise, and to give acquittances therefor in proper form, to make all purchases and sales she may think fit; to bind me jointly with herself in the guaranty of contracts which shall be made, to insert therein such agreements as she shall think proper, to consent to all leases to farm and layers; to receive all successions; to accept them purely and simply, or under benefit d' inventoire, or to reject them; to proceed to make all inventories and sales of furniture, to form all oppositions requisite and necessary, and, moreover, in case of difficulty, to implead, to appeal, to acquiesce, to do and stop seizine of lands, to grant releases, to settle amicably, to substitute one or more agents for the whole, and generally to do as occasion and the administration of all our affairs shall require, all she shall judge fit and proper, it being my intention that the present power of att'y
864 shall be available for cases which I cannot foresee, tho' they should require an authority more special, and that it be not subject to go out of date, and that it remain valid and effectual until expressly revoked, notwithstanding the lapse of time, engaging to ratify whatever shall be done and performed by my said wife, and to confirm the same in case of need on the first requirement for such as my will.

Done at Montreal the 25th day of March, the year 1759, and I have set my signature at the foot of these presents.

(Sig) LE GARDEUR CHEV'R REPENTIGNY.

The present power was certified as true by Madame Marie Magdeline Chossegros de Lery, and at her request marked by the undersigned, "un desir de quittance posses," before me this day, the 10th of August, 1759, as signed.

(Sig) LERY REPENTIGNY.
PANET.

865 Exhibit R, substitution of att'ey under power of attorney, (Exhibit Q, last above,) M'me de Repentigny to Raimond Quesnel, 29 May, 1761.—(See Exhibit 18, attached to stipulations 19 and 21, Nov., 1862.

867 EXHIBIT S.

Deed of partnership, De Repentigny with De Langy and others, 27th Jan'ry, 1756.

Translation.

Were present M. Louis le Gardeur Chev'r de Repentigny, lieut. of infantry, residing ordinarily at Quebec, being at present at Montreal, lodging at the house of Morant, carpenter of the king, situated on St. Paul street, Joseph de Langy, esquire, Sieur de Fontenelle de Montegron, residing in the said city, St. Gabriel street, and Sieur Rene Decouagne, junior, residing in the said city, St. Paul street, of the other part, who voluntarily and by these presents associate themselves together for trading in merchandizes, to be carried on as well with the Indians as the French, for the management (exploitation) of the posts of Kamanigtigouin and Vrichipocoton, and their dependences during three years; these presents to commence on the arrival of the canoes at the said posts, and to end in the year 1758, on the arrival of the canoes in this city, together; for the working (exploitation) of the post of the Sault Ste Marie and its dependences, to commence as aforesaid, and to end in the year 1759, on the arrival of the canoes in this said city; for the good and the advantage of which the said Louis de Langy and Decouagne shall bestow their care and industry, and each and every of them, at the post at which he shall carry on the said partnership, of the
868 transactions of which they shall make communication to the said Sieur de Repentigny, and in the carrying on of which they shall conduct themselves according to the ordinary usage of voyageurs.

And it being understood that the said Sieur de Repentigny has merchandizes at the said posts which enter into the funds of said partnership from the present time, it is agreed that so soon as one of the partners shall arrive at the said posts there shall be made out an inventory or invoice thereof, the amount whereof shall be paid (paye) to the said Sieur de Repentigny, at the close of this partnership, without interest, in castor currency or peltries, at prices then current at Quebec in the like money (meme monnaye,) to wit, the merchandises, bearing a profit of 60 per cent. above the price of purchase in France; and in regard to gunpowder and cloths, they are to be at the price of the bureaux; and as for the utensils and tools for use at the posts, they shall be at a price to be agreed upon. The said partners are to be fed and entertained at the said posts, whether in going up, or wondering, or coming down, as is customary for the voyageurs to be treated, but they shall not appropriate any castors, peltries, or other things of the partnership, until the rent of the posts and the wages of the employes and other expenses
869 are entirely paid off and acquitted, nor shall they make any individual trade at the said posts, on pain of losing the effects which shall be found negociated.

The presents which it may be best to make to the Indians shall be taken from among the effects of the said partnership, and the presents which may be made by the Indians shall be and belong entirely to the partnership, the said Sieur de R'y consenting, and according to the said partners that all the credits which they shall derive from the aforesaid posts shall be for the profit of the partnership; and, also, in case the commandant of the post of Kamanigtigouin should be accorded to him, the partners shall not be held to bring him the 2,400 weight which the fermiers (tenants) are accustomed to bring annually to the commandant, and then the said post would,

at the expiration of the said lease, be continued to the said Sieur de R'y, it shall be permissible for the said Sieur de Langy and Decouange, to continue, if to them it shall seem good, the said partnership for and during all the time of the new concession, and upon the same charges, clauses, and conditions as aforesaid; and no one of the said partners is to quit his post, nor cede away his right in the present partnership, and its continuation,
870 without the consent in writing of the other associates, and notice. Each promises and obliges himself to winter and remain during his continuance in the partnership in the post where he is to occupy. It shall also be permissible for the said Sieurs de Langy and Decouagne to continue the said partnership for the working of the post of the Sault Ste Marie and its dependences, at the expiration of the present agreement, during three other years, on the same charges, clauses, and conditions above mentioned, without that in either case the Sieur de R'y may exact any rent (firme) for the said post, the said sieurs, partners, agreeing that in case of the death of one of them the present copartnership shall continue at the profit of their widow or heirs, when they shall not be able to exact or demand any amount of the consequences, (suivants,) except at the expiration of this present agreement. When that happens the profits shall be divided by thirds among the said partners, and the losses shall also be borne by thirds. And in case of disagreement among them, they shall be held to refer it to the advice and decision of three merchants of this city, whom they
871 shall select, under penalty that the parties refusing shall pay all expense, damages, and interest to the party acquiescing.

And by these same presents the said sieurs, partners, oblige themselves to take, during the existence of the said partnership, all the goods and merchandizes they may need for the working of the three above-mentioned posts, and their dependencies, from the Sieur Hery, a merchant and resident of this city, and to address to him each year all the beaver, peltries, and other effects derived from said posts, without sending off elsewhere any of them, in order to reimburse him his advances, the peltries at the Quebec price, on the standard of beaver. The said Hery being now present, and in consequence of the foregoing, promises and obliges himself to furnish to the said associates, each year, to commence at present, all the merchandizes and effects they need, according to the memorandum which they have furnished him this present year, and according to those which shall be sent him each year by the ordinary convoys, which merchandizes they promise and oblige themselves jointly and severally to pay for at the usual reductions (aux renunciations accoutumees) to the said Hery, to wit, the merchandizes
872 producing a profit this year only at the rate of 60 per cent. over and above the invoice price in France; and powder and cloths at the beaureax prices; and the wines and brandies at prices current in this city, in cash; and this rule shall be observed for the other years, save only the merchandises bearing a profit, which shall be paid for to him, at 15 per cent. above the current profit at Quebec. It being, however, well understood that if the Sieur Hery has not on hand certain descriptions of the merchandizes mentioned in the said memo., he shall be held to furnish them only when he can, that is to say, he shall do his utmost to have them, and when he cannot the said sieurs, partners, shall have no claim for damages or interest against him.

In the absence of the associates the said Hery shall engage men and cause to be done the necessary works, shall make advances in payments to the employes, rent of the posts, and other disbursements which shall be requisite, as also the sale at Quebec of the peltries at the most advantageous prices possible on the standard of beaver (in recipessi du castor,) from the produce of which he will reimburse himself for the advances

873 made; and if the product exceeds the said advances it shall remain in the hands of Mons. Hery until the termination of the partnership, without his being held to pay any interest; as, also, if the returns are not sufficient the said associates shall not pay demurrage (interest) on the advances which Sieur Hery shall have made them; for thus, &c., qui for the execution of these presents they have elected their domicils irrevocable in their abode above mentioned, in which place, and notwithstanding, &c., they promise, &c., obl'g, &c., rent, &c.

Done and passed at Montreal, at the house of said Messire Hery, the 27th of January, 1756, and after reading they have signed.

(Sig) - LE GARDUER DE REPENTIGNY.
" MONTEGRON LANGY.
" HERY.
" RENE DE COUAGNE, FILS.
" PANET.
" DAME DE BLANZY.

The withdrawal of De Langy.

And on the 26th of April, a. m., 1756, before the royal notaries above mentioned and undersigned, came the said Sieur Fontenelle de Langy, named in the contract on the other side, who voluntarily withdrew, and by
874 these presents withdraws, from the partnership by him contracted with the Sieurs de Repentigny and De Couagne by the said act on the other side, not intending and being unwilling to enter into it in any manner; which has been accepted as well by the said Sieur de Couagne by these presents as by the Sieur Charles Hery, also by these presents; who and each of whom in this regard have voluntarily discharged, and by these presents do discharge, the said Sieur Langy de Fontenelle from all obligations, charges, clauses, and conditions whereinto the said Sieur Langy has entered in reference to each other by the aforesaid act, even the joint and several stipulations, promises, &c., obligat., &c., renont., &c.

Done and passed at Montreal in the office the day and year aforesaid, and after reading have signed it.

(Signed) FONTENELLE DE LANGY.
" HERY.
" RENE DE COUAGNE, FILS.
" PANET.
" DAME DE BLANZY.

Introduction of Mr. Caron into the partnership.

And on the 27th of April, p. m., 1756, before the aforesaid and undersigned notaries, appeared the S'r Joseph Caron, voyageur in the upper country, domiciled in this city, St. Joseph street, who in consequence of the withdrawal of the Sieur Langy de Fontenelle, according to the act above described, from the partnership by him contracted with the said Sieur
875 De Couagne and the Chev'r de R., by the act on the other side, and has by the consent of the said S'r Rene de Couagne, present and accepting, taken and takes in lieu and place of the said S'r de Langy the same interest which he had in the partnership. And he in consequence promises and obliges himself in lieu and the place of the said Sieur Langy to follow, guard, and fulfil all the charges, clauses, and conditions into which he entered with the said S'rs de Couagne and De Repentigny by the aforesaid act of partnership; the reading whereof has now been made to him and which he says he well understands and comprehend. The which charges,

clauses, and conditions shall have the same effect in respect of himself as if the same were here expressed, and shall be joint and several with the said Sieur de Couagne and De Repentigny, as to the debts of the said posts; chosing as his domicile his abode above mentioned, at which place, &c., notwithstanding, &c., promis., &c., obligat., &c., renant, &c.

Done and passed at Montreal in the office the day and year aforesaid, and the said Sieur de Couagne has signed and the said Caron declaring, on inquiry, that he cannot write nor sign the same is read to him.

(Signed) RENE DE COUAGNE, FILS.
" PANET.
" DAME DE BLANZY.

877 EXHIBIT XVI.

Certificate of marriage of Louis de Bonne, 14 July, 1751.

Translation.

PROVINCE OF CANADA, *District of Montreal.*

Extract from the Register of Acts of Baptisms, Marriages, and Burials made in the parish of Notre Dame, of the city of Montreal, during the year one thousand seven hundred and fifty-one.

The fourteenth July, one thousand seven hundred and fifty-one, after the publication of one ban, having seen the dispensation of the two others granted by Mre. Louis Noomant, grand vicar of my lord the bishop of Quebec, I, the subscribed deacon of the cathedral of Quebec, having taken the mutual consent by words of the here present Louis de Bonne, knight, captain of the infantry regiment of Conde, son of nobleman Louis Joseph de Bonne, of Missegle, joint lord of Viviers les Montagues and of Mrs. Marie de Villenenne, his father and mother, of the parish of St. Martin, bishopric of Cavour, of the one part, and of also the here present Miss Marie Louise Prudhome, seventeen years of age, daughter of Sr. Louis Prudhome, lieutenant colonel of the militia of this city and government of Montreal, and of Mrs. Marie Louise la Marque of Marin, her father and mother, of this parish, of the other part, have married them according to the rules and customs observed in the holy church in presence of the high and mighty lord the Marquis de la Jonquiere, chief of squadron, commander of the military order of St. Louis, governor general of the whole of New France, of Mr. Charles le Moyne, baron of Longueil, knight of the military order of St. Louis, governor of Montreal and dependancies, of Victor Varrien, esquire, Arde la Mave, intendant commissary, of Mr. Maitre Guiton Mourepos, counsellor of the king, and his lieutenant general within the royal jurisdiction of Montreal, and of M're Antoine Deal, priest vicar performing the curate's func-
878 tion in the above-named parish, all of whom have signed.

(Signed) The Ch'r de Bonne, Louise Prudhomme, La Jonquiere, Longueiul, L. Prudhomme, Varin de Beaujenvarin, Guiton Mourepos, Amable Prudhomme, [illegible] Auedevilliers la Peirriere, La Gorgendiere Marin, De Prez Marin, C. Marin, Pen Cabamac, dean, Charlotte Longueuil, Henrien Deals, vic.

We, the subscribed prothonotary of the superior court for Lower Canada, in and for the district of Montreal, certify that the extract hereabove is in everything conformable to the original which is found in the Register of the Acts of Baptisms, Marriages, and Burials, made in the said parish during the year one thousand seven hundred and fifty-one, the said register deposited in the archives of the said court, of which we are the depositary.

Montreal, the eighth day of January, one thousand eight hundred and sixty-one.

MONK, COFFIN & PAPINEAU, *P. N.*

879 EXHIBIT XVII.

Certificate of burial of P. A. de Bonne, 9th Sept., 1816.

Translation.

On the ninth of September, one thousand eight hundred and sixteen, by us, the subscribed curate of Beauport, there has been buried, in the church of this parish, under the seignorial seat of the reverend Jesuit fathers, with the permission of Mr. Sinay, curate of Quebec, the body of the Honorable Pierre Amable de Bonne, member of the executive council of this province, colonel of militia of the battalion of Beauport, &c., deceased in the parish and within the jurisdiction of Quebec the sixteenth day of the present month, being fifty-eight years of age. There were present at the burial the honorable chief justice, the Honorable John Mure, Louis Suthroy de Salaberry, and several other friends of the deceased, who have signed with us.

WM. BURNS *Lt. Col. Militia.*
FR. CADIEUX, *P'tre.*

J. SEWELL.
L. DE SALABERRY.
HENRY BONCH, *Lt. Colonel H. M. Army.*
F. F. PERRAULT.
JOHN MURE.
J. HARVEY, *Lt. Col.*

As a conformable copy of the Register of Baptisms, Marriages, and Burial of the parish of Beauport, district of Quebec, for the year one thousand eight hundred and sixteen, deposited in the archives of this district, certified and compared by us, the subscribed guardians of the main prothonotaries of the superior court for Lower Canada, at Quebec, the twenty-fifth day
880 of June, one thousand eight hundred and sixty-one.

BURROUGHS & FIZIER, *P. C. S.*

881 EXHIBIT XVIII.

Certificate of baptism of P. A. de Bonne, 25 Nov., 1758.

Translation.

PROVINCE OF CANADA, *District of Montreal.*

Extract from the Register of the Acts of Baptisms, Marriages, and Burials made in the parish of Montreal during the year one thousand seven hundred and fifty-eight.

The twenty-fifth November, one thousand seven hundred and fifty-eight, I, the undersigned priest, have baptized Pierre Amable, born on the same day about one hour after noon, legitimate son of the esquire Sir Chevalier Louis de Bonne, captain of the troops detached from the marine, and of Lady Louise Prudhomme; the godfather was Mr. Pierre de Rigaud de Vandreuil, governor of Montreal, the godmother Lady Amable Prudhomme, widow of Villiers, all of whom have signed.

(Signed) WIDOW VILLIERS.
(Signed) RIGAUD DE VAUDREUIL.
LE CH. DE BONNE.
(Signed) FANCON, *P'tre.*.

We, subscribed prothonotaries of the superior court for Lower Canada, in and for the district of Montreal, certify that the extract hereabove is in all things conformable to the original which is found in the Register of the Acts

of Baptisms, Marriages, and Burials, made in the said parish during the year one thousand seven hundred and fifty, the said register deposited in the archives of the said court, of which we are depositary.

Montreal, the seventh day of January, one thousand eight hundred and sixty-one.

(Signed) MONK, COFFIN & PAPINEAU, *P. N.*

883 EXHIBIT XIX.

Record of appointment of guardian of P. A. de Bonne, 25 July, 1763.

Translation.

The year one thousand seven hundred and sixty-three, the 25th of July, two o'clock in the afternoon, before us, captains of militia, &c., has appeared lady Louise Brudhomme, widow of the late Si'r Louis Chevalier de Bonne, when living chevalier of the royal and military order of St. Louis, captain of infantry in the service of his very christian majesty in this country, which person has told us that in virtue of our ordinance of this day, being at the foot of the petition which she has presented to us in order to choose a tutor and deputy guardian for Pierre Amable de Bonne, son, a minor, about four and a half years of age, issue of her marriage with the said late Mr. De Bonne, she has for this called together Mr. Louis Prudhomme, merchant of this city, grandfather of the said minor, Mr. Pierre Jean Baptiste Thervieun, merchant, his uncle; Mr. Ettienne Nivard St. Dizier, merchant, cousin; Mr. Roch St. Corrs, esquire, Mr. Deschaillons, Mr. Deschapes, esquire, Mr. De St. Luc, chevalier of the royal and military order of St. Louis, capt. of infantry, Paul Alexandre Daellebout, esq., Mr. De Crusy, and Mr. Jean Noel Desiraieves, merchant, friends of the said minor, requiring us attending their presence, to receive their advice on the said choice. And the said above named being now in attendance, we have made them take an oath to give us good and faithful advice on the said choice; and after the said oath sworn, have all unanimously said that they are of opinion that the said lady Louise Prudhomme, be, and remain tutrix to her said son minor, and the said Mr. Louis Prudhomme their deputy guardian, and have signed.

(Signed) DAILLEBOUST DE CUISY.
ST. CORRS.
F. HENRENU.
ST. DOZIER.
LA CORRE.

884 ST. LUC.

Whereon we, judges above mentioned, have agreed and do agree, to the advice here above, and conformably to that say that the said widow De Bonne will be, and shall remain, tutrix to her said son minor, in order to manage and govern his interests, and the said Mr. Louis Prudhomme their deputy guardian, who here present, have voluntarily accepted the said charges, promised each with respect to his own, to do their duty in the premises, taken the accustomed oath and have signed, of which act the day and the year as above.

——— DE BONNE.
L. PRUDHOMME.
R. DECOUAGNE.
IGNACE GAMELIN.
HERVIEUR.
PANET.

As true copy conformable to the original left in the rolls of the superior court for the district of Montreal, compared and certified on the said original, by us the subscribed protonotary of the said court and guardian of its archives.

Montreal, this seventh day of January, one thousand eight hundred and sixty.

MONK, COFFIN & PAPINEAU, *P. N.*

Exhibit XX, notarial deed. De Bonne to Caldwell, 12 July, 1796.—(See Exhibit H, last above.) Exhibit XXI, quitclaim deed. Caldwell to Noble, 18 July, 1798.—(See Exhibit L, last above.)

885 EXHIBIT XXI*a*.

Agreement—Caldwell with Noble, 1 June, 1798.

Articles of agreement, indented, made, and concluded upon the first day June, in the year of our Lord one thousand seven hundred and ninety-eight, between James Caldwell, of Watervleet, in the county of Albany, merchant, of the one part, and Arthur Noble, of Nobleborough, esquire, of the other part. Whereas it appears by a certain notarial paper or instrument in writing, under the hand and seal of Charles Stewart, public notary for the city of Quebec, and province of Lower Canada, that on the twelfth day of July, in the year of our Lord one thousand seven hundred and ninety-six, Pierre Amable de Bonne, in consideration of one thousand five hundred and seventy-two pounds two shillings and three pence sterling, money of Great Britain, did grant, bargain, sell, assign, transfer and set over unto the said James Caldwell, his heirs and assigns forever, all that undivided half of the fief or seigniory, called St. Marie or Sault St. Marie, the whole containing six French leagues in front, by six leagues like measure in depth; joining the river which separates the two lakes; and whereas by the said instrument in writing, it further appears that the said consideration money was to be paid at certain stipulated periods, and for the payment thereof the said bargained premises were mortgaged and hypotheticated; and where-
886 as the said James Caldwell hath agreed to convey, release, and the said bargained premises to the aforesaid Arthur Noble, his heirs and assigns forever, on or before the first day of August next, free and clearly discharged of the said mortgage and hopothetication, and to deliver to the said Arthur Noble, all the papers forming or constituting the title for the said lands, in consideration that the said Arthur Noble shall deliver up to the said James Caldwell a certain memorandum in writing, signed by the said James Caldwel and Jeremiah Van Rensselan, by which they have agreed, for the consideration therein mentioned, to convey and release to the said Arthur Noble, his heirs and assigns forever, the equal undivided eighth part of certain tracts of land purchased by the said James Caldwell and Jeremiah Van Rensselaer, from Joseph Howard, situate in the State of Virginia, containing in the whole one hundred and twenty-six thousand acres of land, and also that the said Arthur Noble shall release and quitclaim to the said James Caldwell, his heirs and assigns forever, all his right, title, and interest of, in, and to the said eighth part of the said tract of land, and also
887 that the said Arthur Noble shall assign to the said James Caldwell a certain mortgage from Joseph Holt, of the county of Otsego, dated the second day of June, in the year of our Lord one thousand seven hundred and ninety-one, conditioned for securing the sum of two thousand and forty pounds to the said Arthur Noble, also a certain bond of Caleb B. Merrills, dated the sixth day of June, one thousand seven hundred and ninety-five,

conditioned for the payment of twelve hundred pounds, on or before the fourteenth day of July, which will be in the year of our Lord one thousand eight hundred, with legal interest for the same to be paid annually, to commence on the fourteenth day of July next ensuing the date of said bond, also a bond from John Laurence and Robert Troup, of the city of New York, dated the first day of July, in the year of our Lord one thousand seven hundred and ninety-five, conditioned for the payment of three hundred pounds, lawful money of the State of New York, with interest at six pounds per centum per annum, from the first day of July, in the year of our Lord one thousand seven hundred and ninety-six, payable on the first day of July, one thousand seven hundred and ninety-nine, also one other bond from the said John and
888 Robert, for the like sum with like interest, payable on the first day of July, one thousand eight hundred, also one other bond for the like sum with the like interest, payable on the first day of July, one thousand eight hundred and one, also one other bond from the said John and Robert, for the like sum with like interest, payable on the first day of July, one thousand eight hundred and two, also one other bond from the said Robert and John, of like date, for the like sum with like interest, payable on the first day of July, one thousand eight hundred and three, also one other bond from the said John and Robert, of like date for the like sum with like interest, payable on the first day of July, one thousand eight hundred and four; and whereas, in pursuance of the said agreement, the said Arthur Noble hath already assigned to the said James Caldwell, the said several in part recited bonds from the said John Lawrence and Robert Troup: Now therefore the said James Caldwell doth hereby for himself, his heirs, and assigns, covenant, promise, and agree with the said Arthur Noble, his heirs and assigns, that he, the said James Caldwell, his heirs or assigns, shall or will on or before the first day of August next, grant, release, and quitclaim to the
889 said Arthur Noble, the said equal undivided half part of all the fief or seigniory called St. Marie or Sault St. Marie, the whole containing six French leagues in front by six leagues like measure in depth, joining the river which seperates the two lakes, free and clear of the said mortgage and hypothetication; and further, that he will before the first day of August, cause the said premises to be fully and clearly exonerated and discharged from the said mortgage and hypothetication, and deliver up to the said Arthur Noble, his heirs and assigns, proper vouchers of such discharge, and all such papers as form or constitute the title of the said lands. And the said Arthur Noble for himself, his heirs, executors, and administrators, doth covenant, promise, and agree, with the said James Caldwell, his executors, administrators, and assigns, that he, the said Anthur Noble, his executors, administrators, and assigns, on receiving such conveyance as aforesaid, for the said bargained premises with proper vouchers, agreeable to law, that the same are clearly and absolutely discharged of the said mortgages and hypothetication, and on the receipt of the papers forming and constituting a title to the same as aforesaid, shall and will deliver to the said James
890 Caldwell, the memorandum *the memorandum* in writing aforesaid, signed by the said James Caldwell, and Jeremiah Van Rensselaer, respecting the tracts of land aforesaid, situate in the State of Virginia, and will also grant, release, and quitclaim to the said James Caldwell, his heirs, and assigns, when hereunto requested, all his right and title in the said equal one eighth part of the said tracts of lands, and will also assign the abovementioned bonds and mortgage, and for the true performance hereof, the parties to these presents do respectively bind themselves, their heirs, executors, and administrators, each to the other, in the penal sum of ten thousand dollars.

In witness whereof, the parties to these presents have hereunto set their hands and seals the day and year above written.

(Signed) JAMES CALDWELL. [SEAL.]
(Signed) ARTHUR NOBLE. [SEAL.]

Witness: JAMES A. BREDE.

Signed, sealed, and delivered in the presence—the words "eight hundred and four," on the second line of the 4th, and part of the word hypothecation on the second line of the 5th sheets written on erasure—of us.

(Signed) JAMES MCBRIDE.
(Signed) RICHARD S. TREAT.

893 DETROIT DEPOSITIONS (NO. 2) OF HON. J. M. HOWARD.—(Filed 21st May, 1863.)

Jacob M. Howard, being sworn as a witness for the petitioners in the above-entitled cause, deposes and says:

Being at Sault Ste Marie on the 23d of August, 1862, I determined to examine the western shore of Mud Lake, about twenty miles south of the Sault, for the purpose of ascertaining the locality of a stream known among the people at the Sault as the Munnskong River, and any other considerable stream falling into that lake from the west. For this purpose I fitted out a party consisting of myself, Hon. Samuel Ashman, postmaster and judge of probate at the Sault, William T. Spaulding, a merchant at the Sault, and three men from the Canada side, to wit, Antoine Fortin, Joseph Minville, and Jean Baptiste Masta, to manage the canoe. We started at 8 a. m., passed down the Little Rapids and down Hay Lake, and arrived at the mouth of the river Mashkodesaging, which falls into Hay Lake, near
894 its southern extremity and opposite Hay Island, and, as marked on the government map, on sec. 6, T. 45 N., R. 2 east. We passed up the mouth of this stream, perhaps forty rods, to a small Indian encampment, and found persons there gathering hay. We then resumed our voyage down, passed the rapids in the river opposite Anebish Island and around a point of land, and then struck off towards the southwestern shore of Mud Lake, which is rather a shallow bay than a lake, passed through immense fields of weeds and rushes, and other aquatic plants, passed on the south side of two small islands, on one of which Mr. Ashman had had a fishing establishment some years ago. We went to the southwest of them, and passed up to the west, into a sort of pointed bay or sharp indentation in the shore, where I fancied we should find the mouth of the river, but we did not. We coasted on to the northeast for a short distance, through thick weeds and rushes, then to the north, and directly fell into a channel, where the current was strong and entirely free from obstructions of any kind. We at once passed up this channel, evidently the outlet of a river, and followed it upward to the west, into the hard land. This stream was evidently the Munnskong River, and was so pronounced by Mr. Ashman, who had visited before. It was about five rods wide on an average, but varying with the make of the ground; the current was not strong, but quite distinct. The channel,
895 which I repeatedly sounded with an oar, was from 6 to 8 feet in depth with a firm bottom, and volume of water sufficient to float craft of considerable size. We passed up the stream about one mile, perhaps more; found but very little drift-wood, but a straight deep channel with rather low banks, covered with a very heavy growth of wild hay (called "bleu joint"), which apparently extended to a considerable distance on each side. The large trees on the banks were generally dead and dry, killed, I should judge, by the fire or overflowing of the stream, though there was a good deal of "second-growth" timber, such as poplar, ash, and other trees that grow in

wet bottoms. We went ashore and ate our dinner, then returned to the lake. Leaving the channel of this river, we struck off northwardly in search of another stream, known to the inhabitants as the "Little Munnskong," which, as represented in the government surveys, falls into Mud Lake a very short distance northeast of the mouth of the former river, and on the east section line of sec. 14, T. 44 N., R. 1 E., the mouth of the former being in the same section. We had not proceeded more, probably less, than half a mile when we found another channel or river mouth, which was pronounced by Mr. Ashman to be the Little Munnskong. Its depth fell much short of that of the other stream, being only about five feet; its width was not more than about half that of the other, but the current just about the same.

896 We passed up it a short distance to assure ourselves of its width and depth. Judging from what I saw of these two channels, and having reference to the great lapse of time since the date of the Franquet's map, which I have examined, it being one hundred and ten years, and from the direction in which the two channels run, I feel assured that they must at that date have fallen into each other and formed one channel at a point further out into the lake than either of the present mouths, though we had no sufficient means of exploring and verifying the fact. The bottom of the lake in this part of it is oozy and muddy, and the water in many places filled with sedge, rushes, and a great variety of aquatic weeds and plants; but we found no drift-wood either in the lake or along the shore.

The lake is shallow in its western parts, and subject to rises and falls, under the influence of the winds and the freshets of spring and fall. It is quite evident that the stream we first visited is the principal and far the larger of the two streams.

They fall into Mud Lake opposite the centre of St. Joseph Island, which lies on the Canada side.

The map which I used was prepared from the U. S. government surveys from the records of the U. S. land office, by Lieut. A. L. Magilton, in 1855.

We returned up the river, and night coming on we were compelled, for want of better accommodations, to stay in an Indian wigwam until

897 morning, at the mouth of the Mashkodesaging, and the next day returned to the Sault.

(Signed) J. M. HOWARD.

Sworn and subscribed before me this 21st day of May, 1863.

(Signed) ADDISON MANDELL,
U. S. Commissioner, eastern dist. of Mich.

The within deposition admitted by consent of parties. May 21, 1863.

(Signed) ALFRED RUSSELL,
U. S. Dist. Att'y, east. dist. Mich.

(Signed) J. M. HOWARD, *Sol. for pet'rs.*

899 *Stipulation to amend petition by inserting names of the children of Josephine Clavie, deceased, filed* 21 *September*, 1863.

The above-named Josephine Lucrece, one of the petitioners, widow of Cyprien Clavie, deceased, having died on the island of Guadeloupe on the 19th of March, A. D. 1863, it is hereby stipulated and admitted by the parties that at her death she left the four following-named children surviving her, the only issue of the marriage of herself with said Cyprien Clavie, deceased, to wit:

Thereze Emilie Clavie, a daughter, born at Guadeloupe, November 29th, A. D. 1841; Aristide Clavie, born at same place, January 19th, A. D. 1845; Marie Clorinde Clavie, a daughter, born at same place, February 23rd,

1848, and Marie Octavie Clavie, a daughter, born at same place, March 8th, A. D. 1852; all said children now residing on said island of Guadeloupe.

And it is further stipulated that the petition in this case be amended,
900 and the same is hereby amended by inserting the names of said Thereze Emilie Clavie, Aristide Clavie, Marie Clorine Clavie, and Marie Octavie Clavie as petitioners in this cause in the right of their said mother, and that Alexis F. Favarger be appointed by the court, and allowed to appear and prosecute this case as the next friend of said infants, Aristide, Marie Clorinde, and Marie Octavie, and in their names and behalf, an order to which effect may at any time be entered; and further, that this case be regarded as at issue between the parties upon the replication filed in December, 1861.

September 21st, 1863.

(Signed) J. M. HOWARD, *Sol. for Pet'rs.*
" ALFRED RUSSELL,
U. S. Dist. Att'y.

901 WASHINGTON DEPOSITIONS —Filed 7th October, 1863.

Direct interrogatories on the part of the respondents.

First interrogatory. What is your name and calling, and what have been your opportunities for becoming acquainted with the principles according to which lands are surveyed and laid off to suit the descriptions or calls contained in grants made by foreign governments whose dominions have passed to the United States of America?

Second interrogatory. Look upon the translations of the concession of 1750 and of the ratification of 1751 contained in the petition in this matter. Look also upon the map, marked A, which purports to give two figures, according to either of which, that is to say, according to "the general course line," or according to the "river shore line" therein, the boundaries
902 of the seigneury, referred to in the said petition, might be laid down consistently with the said calls. Is there or not any one figure which you can affirm to be the necessary and only proper figure to be formed by the boundary lines of such seigneury if laid down consistently with the calls aforesaid, assuming the said seigneury to be exclusively on the south or United States side of the St. Mary's River? If there is not, in your opinion, any one figure which is such necessary and only proper figure, is or is not either of the figures described upon the said map by the boundary lines marked red and brown, respectively, as consistent with and as much necessitated by the said calls or the other of them? And is it or not the fact that several other figures might be drawn, varying according to the line, which in the views of various persons might be assumed to be the "general course line" of the river, and all of which figures might be held to be as consistent with and as much necessitated by the said calls as the figures now laid down on the said map?

Third interrogatory. Look upon the tracing, marked B, of a map of the said signeury, and with the name "Franquet" at foot. Do you or not consider the figure of the said seigneury according to the said tracing B to be consistent with the said calls; and if not, why not?

903 Fourth interrogatory. At or about what point would a line laid off southeast by magnetic bearings from the centre point in St. Mary's Rapids, marked on the map A aforesaid, strike the sea board of the United States, and at or about what point would a line laid off southeast by true bearings (allowing for variation) from the same centre point strike the said sea board?

Allowed, subject to objection on the ground of incompetency or irrelevancy to any question or any answer.

Sept. 9, 1863.

(Signed) J. M. HOWARD, *Sol. for Pet'rs.*

(Signed) ALFRED RUSSELL, *Sol. for Resp'ts.*

904 *Cross-interrogatories.*

First cross-interrogatory. Do you read and speak the French language? If so, please state whether the language found both in said concession and ratification, "lieu (or endroit) nomme le Sault Ste Marie, bordant la reviere qui separe les deux lacs," does not imply that one whole side of the tract should be bounded by the river.

Second. Please explain what, with reference to the river and the lake shores, you understand by 6 leagues of front by (or upon) 6 leagues of depth, *i. e.*, six lieues de front sur six lieues de profondeur"?

Third. What, in English miles and parts of English miles, was the length of a French lieue or league when used in concessions or grants of land in the Louisiana territory?

Fourth. Please state whether in the old French concessions or ratifications in Louisiana it was not usual to omit exact descriptions of lands by metes and bounds or other exact means or calls.

Fifth. Look at the map or tracing with the name Franquet on it, mentioned in the third direct-interrogatory. Assuming that the "portage," mentioned in the present concession and brevet of ratification, was on the south
905 side of the River St. Mary, passing round the falls from a spot on the river bank, say half a mile below the foot of the falls to a point, say a half mile above the head of the falls, does not the description in the concession and ratification designate the north side of the tract as the front as the portage was there? Why, in your opinion, was the portage referred to in those documents? In ascertaining the distance directly across this front (which was to be 6 leagues) would you not begin at a point on the river? And how would you ascertain the width of the front—by a straigth line running from east to west, or by a crooked line following the sinuosities of the river bank? and if in the latter mode, what meaning or effect do you give the language, "six lieues de front sur le portage," as your line would actually fall north of the portage?

Sixth. State, if you are able, what construction the federal government and its courts have given to the French word front, as applied to tracts fronting on bodies of water or watercourses, and whether they have construed it as defining the water line or shore in its crooked course or as indicating the width of the tract measured by a straight line.

Seventh. You will observe the general course of the St. Mary's River from the Falls of Munuskong Bay (sometimes called Mud Lake) is nearly southeast. Please state what, in your opinion, would be a proper
906 mode of surveying out of the tract granted or drawing a map or diagram thereof, in order to carry out the intention of the grant.

Eighth. Please state if you are able who prepared the map mentioned in the second direct interrogatory, and at whose request; what is the scale, and what are the theories, propositions, or assumptions, which it is intended to illustrate—set forth particularly.

Sept. 9, 1863.

(Signed) J. M. HOWARD, *Sol. for Pet'rs.*

The above cross-interrogatories are allowed, subject to objection to any question or any answer on the ground of incompetency or irrelevancy.

(Signed) ALFRED RUSSELL, *U. S. Dist. Att'y.*

907 Stephen J. Dallas, having first taken the oath mentioned in the commission, testifies as follows, viz:

To the first direct interrogatory he says: My name is Stephen J. Dallas; am a clerk in the surveying division of the General Land Office, in Washington, D. C., since 1852; for upwards of three years I occupied the position of the principal clerk of surveys, now filled by another person. During
908 my connection with that position I have had opportunities of becoming acquainted with the principles governing the survey of private grants derived from foreign governments, whose dominions have passed to the United States of America, in accordance with the calls contained in various grants.

To the second direct interrogatory he says that, taking the language of the translations of the concession of 1750, to wit: "the said Sault Ste Mary's, with six leagues of front by six leagues in depth, bordering the river which separates the two lakes," and of the ratification of 1751, viz: "the place called the Sault Ste Mary's, with six leagues of front upon the portage by six leagues in depth, bordering the river which separates the two lakes," and assuming the grant to lie on the south side of the Ste Mary's River, and unaided by a diagram of the location thereof, I should locate the grant in accordance with the calls aforesaid and general rules adopted for the survey of grants located on watercourses. In carrying out such survey a different figure would result in laying the boundary lines from those represented on map A, showing two figures, whose boundary lines are marked in red and brown shades. Either of these
909 figures marked red and brown may be consistent with and necessitated by the said calls, for aught I know, as various surveyors may differ in assuming the general course line of the river, and yet consider location of the grant consistent with the aforesaid calls, which are indefinite as to the beginning point.

The figure which I should affirm to be the necessary, and proper, and consistent with the calls of the grant and general rules adopted by the surveying department of the United States, in the absence of a plot of survey accompanying the grant and illustrating its locality, would be the result of the following procedure, viz: I should ascertain the center of the Sault Ste Mary's Rapids, the chief object of the grant, and on the south bank of the river right opposite such centre establish the beginning point or the centre of the front line of the grant, whence I would course along the sinuosities of the river up and down to such distances as would enable me to ascertain the general course line of the river for the distance of six leagues, passing through Sault Ste Marie as a center. Having thus determined the general course line of the river, I would run the side lines at right angles with said general course line, starting from the points on the river above and below said centre point, where lines at right angles with said general course
910 line, and three leagues above and below said center point on said general course line, would intersect the bank of the river; thence back to such distances that the average depth of said grant would be six leagues, and making also the width of the same six leagues, and the area of the grant thirty-six square leagues.

It is proper to observe that the determination of the general course of the river, involving numerous sinuosities of its bank, may differ according to the views of different surveyors, assuming variant compensating lines, wherefrom general course of the river is deducible, and consequently may produce different figures in locating grants, yet may be considered as necessitated by the calls thereof.

To the third direct interrogatory he says that the figure, according to the tracing marked B, of a map of the "seigneurie des Mrs. De Bonne et De Repentigny," might by one mind be very well considered consistent with the

general terms of the grant, whilst by another a different and variant location might also be regarded as consistent therewith. The want of the starting point in the grant renders the true location as it was intended to
911 be granted doubtful.

To the fourth direct interrogatory he says that: I cannot determine at what particular point a line laid off southeast by magnetic bearings from the centre point in Ste Mary's Rapids, as marked on map A, would strike the seaboard of the United States, owing to the uncertainty of the equal magnetic variation for the distance intervening between the extreme points. The line laid off southeast by true bearings (allowing for variation) from the same centre point, would strike the said seaboard about twenty-three miles north of Cape May, between Corson's and Townsend's Inlets, on 39 degrees 10 minutes of north latitude, according to Colton's map of the world on Mercator's projection.

(Signed) STEPHEN J. DALLAS.

Sworn and subscribed before us, at Washington City, District of Columbia, this 2d day of October, 1863.

(Signed) NATH'L WILSON,
(Signed) SAM'L L. PHILIPS, *Commissioners.*

912 On the 3d day of October, 1863, the undersigned met at the same place and for the same purpose, and the said Stephen J. Dallas having first taken the oath mentioned in the foregoing commission, testifies as follows, viz:

To the first cross-interrogatory he says that: I read and speak the French language. The language employed in the concession and ratification, viz: "lieu (ou endroit) nomme le Sault Ste. Marie * * bardaint la riviere qui separe les deux lacs," implies that one whole side of the tract should be bounded by the river, if its location is such as not to admit of giving it more than one side on the river, but if the configuration of the river which separates the two lakes does admit of giving two sides of the grant on the river, that is to say, the front and depth of it, the meaning "bordant la riviere qui separe les deux lacs" would equally apply to the latter case as it does to the former.

To the second cross-interrogatory he says that the words "six lieues de front sur six lieues de profondeur" mean that the front of the tract bordering the river should be six leagues and the depth or side lines of the grant of six leagues each, which, when connected by a right line, should include thirty-six superficial leagues. The grant thus bounded should neither
913 lose nor gain quantity in consequence of the sinuosities of the watercourse.

To the fifth cross-interrogatory he says that, assuming the "portage" mentioned in the ratification to have been on the south bank of the river between the points one half mile below the foot of the falls and one half mile above the head of the falls, the description in the concession and ratification does designate the north side of the tract as the front. As to why was the "portage" referred to in the document, I answer that if we proceed on the assumption that the grant is situated on the south side of the river, it might follow as a consequence that the reference to the "portage" was made so as to give that as the north front and obviate the possibility of locating it on the east, as in both instances the place called the Sault Ste Marie would be included in the grant, but its figure would be different. In the absence of the beginning point of the grant, which is the case, I would ascertain the width of it by establishing the northeast and northwest corners of the grant on the bank of the river equidistant from the centre of the place called Sault Ste Marie, the main object

of the grant, by meandering the sinuosities of the watercourse up and down to such distances as would enable me to ascertain the general course line of the river for the distance of six leagues, passing through Sault Ste
914 Marie as a centre. Having thus determined the general course line of the river, I would run the side lines at right angles with said general course line, beginning at the points on the river above and below said center point, where lines at right angles with said general course line and three leagues above and below said centre point on said general course line would intersect the bank of the river; thence back to such distances that the average depth of said grant would be six leagues, and making also the width of the same six leagues and the area of the grant thirty-six square leagues.

To the eighth cross-interrogatory he says that the map mentioned in the second direct interrogatory was caused to be prepared by the Commissioners of the General Land Office, in Washington City, at the request of Hon. Alfred Russell, United States district attorney at Detroit, Michigan; its scale is two and two-fifths miles to an inch. This map was intended to illustrate possible figures of the grant according to the calls thereof, for, being deficient of the beginning point of the grant, they might be assumed by different persons locating the grant under the circumstances. The figure shaded brown was intended to shew a location of the grant resulting by
915 running out the boundaries by river shore line of six leagues following its sinuosities, having for its centre the middle of the rapids, and by running the side lines and the rear line at right angles to the general course line of the river. The figure shaded pink (red) was intended to show another mode of the location of the grant under the circumstances, by first ascertaining a general course line, A B, (on the plat marked A,) from the rapids as a centre, three leagues each way, determined by compromising the course lines of the water front, as shewn by the dotted lines on the map, and thence running the side lines at right angles thereto, a distance of six leagues resulting by this mode of proceeding, in the figure shaded pink (red) on the aforesaid plat as the land of the grant, and having the required depth of six leagues from the general course line AB, by the water front.

(Signed) STEPHEN J. DALLAS.

Sworn and subscribed before us, at Washington City, District of Columbia, this 3d day of October, 1863.

(Signed) NATH'L WILSON,
(Signed) SAM'L L. PHILLIPS, *Commissioners.*

We hereby certify that the foregoing depositions were written down by Samuel L. Phillips, one of the within-named commissioners, in our
916 presence, and that of the said witness; that they were signed in our presence, and that before proceeding to testify the said witness took the oath mentioned in the commission hereto attached.

(Signed) NATH'L WILSON,
(Signed) SAM'L L. PHILLIPS, *Commissioners.*

Exhibit A, map illustrating the various figures which the Sault Ste Marie Seigneury might possess consistently with the "calls" in the royal grant thereof. Original map, marked Exhibit A, [Dallas,] sent forward to Washington for use of the U. S. Supreme Court, under Rule No. 8 [3.]

Exhibit B, Franquet's map. See original extract from French archives, sent forward to Washington for use of the U. S. Supreme Court, under Rule No. 8 [3,] being the same referred to as Morin's Exhibit AA, in Montreal depositions No. 1.

917 MONTREAL (No. 2) DEPOSITIONS.—Filed 13th October, 1863.

Direct interrogatories on the part of the said petitioners.

First interrogatory What is your age and residence, and your profession and vocation? And if you answer that you are one of the judges of her majesty's courts of Canada, state what court, how long you have been such judge, what in general is the nature and extent of its jurisdiction, and whether your official duties have led you to acquire a thorough knowledge of the ancient and modern laws of Canada, and the modes and practice of administering them. Do you read, speak, and write the French language with ease and accuracy? And have you made the French law of Canada, including the written and unwritten, a study, and been engaged in the practice of it? And have you by study or professional practice, or both, become acquainted with the principles of the common law of England?

917 Second interrogatory. Do you know Honorable William Badgley, of Montreal? If so, please state how long you have known him; what is his profession or vocation? and if a judge of the same court, how long has he acted as such? and what are his attainments, character, and reputation for law learning on the same subjects?

Third interrogatory. Look upon a certain document which will be shown you, purporting to be a copy of the deposition of said William Badgley taken in this case, containing his answers to divers direct interrogatories, cross-interrogatories, and additional cross-interrogatories, (which copy you will annex to your deposition, and which the commissioner will mark as instructed in the annexed commission,) and state whether you have read or heard read the said copy and considered the contents thereof.

Fourth interrogatory. Having read and considered the answers contained therein of said William Badgley to the 4th division of the 6th direct interrogatory, to the 7th, 13th, 16th, and the last or general direct interrogatories, to the 5th cross-interrogatory, the 7th cross-interrogatory, the 8th cross-interrogatory, the 12th cross-interrogatory, the 13th cross-interrogatory, the 14th and the 16th cross-interrogatories, and the 1st, 2d, 3d, 4th, 5th, 6th, 7th, and 8th additional cross-interrogatories, and having read the two printed documents hereto attached, the one a concession to De Bonne and De Repentigny, dated Oct. 18, 1750, the other a confirmation of that concession,

919 please state whether you concur in or dissent from the legal opinions or conclusions of said Badgley expressed in said answers, or any of them, or as to any statements respecting the history of the law, its principles, practice, or administration, and particularly in reference to "reunions," prescription, or limitation, alienage, heirship, and foi et hommage. And if you differ from any of his legal opinions or conclusions, please set forth the grounds of such differences, and state whether or not you are of opinion that the 5th article of the declaration of 1743 prohibited and rendered null and void all reunions which should not be pronounced or declared by the governor and the intendant, or their representatives, as therein mentioned.

Last or general interrogatory. Do you know any other matter or thing which if disclosed would make for the benefit of the petitioners in this case? If so, please set forth the same as fully and particularly as if thereunto specifically interrogated.

(Signed) J. M. HOWARD, *Sol. for Pet'rs.*

The above interrogatories are allowed by consent of parties, subject, however, to all objections to the same, or the answers thereto on the ground of incompetency or irrelevancy on the final hearing of the cause.

(Signed) J. M. HOWARD, *Sol. for Pet'rs.*
ALFRED RUSSELL, *U. S. Dist. Att'y.*

920 *Cross-interrogatories on the part of the respondents.*

First cross-interrogatory. What is your name, age, your residence and vocation? And if you answer that you are a lawyer, state how long, and where you have practiced the law, and whether you are a person learned in the French laws and usages of Canada, and what have been your opportunities to become acquainted with such French laws and usages, especially with the coutume de Paris, so far as it relates to real estate and tenures from the crown.

Second cross-interrogatory. Have you read (if not, please now to read) certain documents purporting to be copies of—

1st. The amended petition in this matter.

2d. The respondents' answers thereto.

3d. Interrogatories, cross-interrogatories, and additional cross-interrogatories exhibited to the Hon'ble William Badgley and certain other witnesses at Montreal, under the commission in this matter dated the 11th September, 1862, and also the replies of said William Badgley and the witnesses
921 Morin and Bouchette thereto?

Third cross-interrogatory. As to violation of 51st article of the coutume: Look upon the 7th of said direct interrogatories, and the 7th cross-interrogatory, and the replies of the said Wm. Badgley thereto, respectively, and state whether, and in what, you differ with the said Wm. Badgley therein, and especially (§§ 7 to 11 of his reply to said cross-interrogatory. As to the 51st article of the said coutume: Did or did not the said article apply to the sale of the entire of a seignory as being more than two thirds thereof? And did it or not apply to such cases as the sales from De Bonne to Caldwell, and from Caldwell to Noble, as in said petition mentioned? State your views fully as to the arrets of 1711, 1732, and 1743, (§§ 12 to 21 of reply to said cross-interrogatory.) Defer replying on these subjects until replying to the 6th cross-interrogatory hereinafter written.

Fourth cross-interrogatory. As to fines: Look upon the 8th and 14th interrogatories, and the 8th and 10th, (said 10th being in said Will'm Badgley's reply referred to as the 9th,) and 14th cross-interrogatories, and the replies of the said Wm. Badgley to each respectively, as also upon §§ 8, 9, 10, 11, 12, and 13 of his reply to the 12th direct interrogatory. State whether, and in what, you differ with the said Wm. Badgley thereon, and es-
922 pecially whether any other, and if so what, fines besides quints accrued to the superior domain on the state of facts mentioned in the said amended petition, and including quints. State the amount now due in all for principal and interest, assuming that nothing was ever paid on account thereof, and that the petitioners' claims were now admitted, subject to the payment thereof.

Fifth cross-interrogatory. As to homage: Look upon the 12th direct interrogatory, the 12th cross-interrogatory, and the reply of the said Wm. Badgley to each respectively, and also upon §§ 1 to 14 of his reply to the 13th direct interrogatory, and section 1 of his reply to the 13th cross-interrogatory. State whether, and in what, you differ from the said Wm. Badgley as to said replies, and herein have regard to the fact that the words "de la mettre en valeur," contained in the confirmation of 1751, are not contained in the provincial grant of 1750; and especially do you or not consider the words "nous suspendons la dite foi et hommage" to mean a suspension of the benefit of said act of fealty and homage?

Sixth cross-interrogatory. As to a judgment being an indispensable prerequisite to reunion: Look upon the 13th direct interrogatory, the 13th cross-interrogatory, and the replies of the said Wm. Badgley to each respectively and especially—

923 I. As to his reply to the 13th direct interrogatory: 1stly. Do you agree (§ 15 to 18) that no real difference exists between the words of the provincial grant of 1750, and of the confirmation of 1751; that is to say, between the words "the concession shall be and remain null," and the words "it shall be reunited to the domain?" Is there or not the legal distinction which exists between acts void and acts voidable? and if so, and the grant is to be considered null and void, would or would not a jugement be absolutely indispensable to the title of the crown, after—

1st. A few feeble and abortive attempts to fulfill, amounting in fact to an almost total neglect of the conditions subsequent, such as stated hereafter at the commencement of part II in this cross-interrogatory, followed by

2d. Abandonment of the fief and absenteeism for a century;

3d. Repudiation of obligation to domestic military service, and perseverance in foreign allegiance and foreign military service, in spite of the direct written remonstrances of the governor general for the time being;

4th. Adverse possession of the abandoned and derelict lands in question (however informally such possession may have been acquired) by the British government and the United States, with acquiesence by the grantees

924 and their representatives for so long a period?

2ndly. Do you agree (§§ 19 to 26) that as to lands becoming liable to reunion for neglect of improvements under § 2 of the arret of 1732 ("si non et le dit temps passe les dites terres demeureront reunies au domaine de sa majeste en vertu du present arret et sans qu'il en soit besoin d'autre") a jugement was absolutely indispensable to the title of the crown under the circumstances 1st, 2nd, 3rd, and 4th above stated, and is there no question whether they might not be held in law when the time limited should be passed, to stand *de facto* reunited to said domain by the mere operation in law of the said arret of 1732, or otherwise, and without a special jugement under the arrets of 1711 or 1743? Give the full force of the words "si non et le dit temps passe demeureront." Do they or not appear to you to contemplate any interval of time whatever between the expiration of the period limited and the commencement of the period of actual and full reunion? And do they or not appear to you to preclude the supposition of intermediate legal proceedings being necessary?

3dly. As to lands becoming liable to reunion under § 3 of the arret of 1732, for attempting to sell them while still covered with wood, ("lesquelles seront pareillement reunies de plein droit au domaine de sa majeste et seront au surplus les deux arrets de 1711, executes, &c.:") Is there no question whether such lands might not be held in law to stand *de facto*

925 reunited to said domain by the mere operation of law on breach of the said arret, and without a special jugement under the arrets of 1711 and 1743, or otherwise, the circumstances being as above 1st, 2d, 3d, and 4th stated? Give the full force of the words "de plein droit."

4thly. As to § 5 of the arret of 1743 ("declarons nulles toutes reunions qui ne seront pas prononces:") Is or is not the scope of that declaration to be considered as limited to reunions, capable of being pronounced, that is to say to jugements or judical decrees of reunion as distinguished from reunions by operation of law, viz: by the arret of 1732, § 2, or "de plein droit."

II. As to his reply to the 13th cross-interrogatory: Look upon the same and upon § 1 to 11 of reply to the last or general interrogatory,

1stly. As to lands being in position of meriting reunion. Assuming the state of facts to be merely that one moiety of said lands had been entered upon by De Repentigny in 1751, and that for four years afterwards some 3 or 4 acres thereof were cultivated and some 6 or 8 head of cattle purchased and kept thereon, but the whole abandoned by him and all claiming under him in 1755 and ever since, and the other moiety never entered upon by De

Bonne or his representatives at all, and that nothing further was ever
926 attempted towards performing the conditions subsequent; assuming that the crown entered into possession without a formal jugement some time between 1763 and 1783, and had since granted about one-half thereof (108,000 acres) to bona fide settlers, and assuming that the laws in force in that particular locality at the time of the United States treaty of 1783 and none others govern the case, are you or not of opinion that the conditions of the grant and confirmation of 1750 and 1751 were sufficiently complied with, and were or were not the said lands between 1755 and the present time in at least a position of meriting reunion ("dans le cas detre reunies.") See reply to § 7, and also to § 10 (commencement) of 13th cross-interrogatory.

2ndly. As to Canadian precedents: Are you or not aware of or do you believe that there has been any case in the Canadas in which the British crown or the Canadian government has taken possession of abandoned or other seigneurial lands meriting reunion (dans le cas d'etre reunies) without first obtaining a formal jugement?

3dly. As to Canadian rules of equity: Supposing such a case to exist and the facts to be as firstly above assumed, is it or not your opinion that a reunion could not be effected without a former jugement under the arrets of 1711 or 1743, and if you are of opinion that for want of such formal jugement alone, impossible as it may have been from political
927 changes to obtain it, the title of the British crown would now be considered, under the coutume of Paris, bad, and its possession wrongful against grantees claiming restitution from the crown in a Canadian court of equity, by virtue of a tenure such as that alleged, under the coutume de Paris, supposing such competent court of equity to exist, specially empowered to adjudicate?

4thly. As to the will of the crown being the essence of the operative power, whereby reunions were effected: Look upon that part of the 13th cross-interrogatory relating to this subject and upon the arrets and the jugement of the 10th May, 1741 therein referred to, and the reply (to said cross-interrogatory) of the said Wm. Badgley (§§ 13 to 19) relating thereto; also upon the act of reunion contained in the acceptance of the surrender of the company of New France and dated March, 1663 (edits T, 32) and the act of reunion contained in the edict suppressing the West India Company, and dated December, 1674, (edits T, 78) as well as the arret of 20th March, 1703, reuniting the entire province of Acadia, and state your own views as to the practically paramount effectiveness of the will of the crown in such matters under French rule, and the constitutional or other checks, if any, which were effective to control the will of the crown and to obtain restitution in case of legal informality in the exercise of the will of the crown by taking possession of an abandoned seigneury, under such circumstances as
928 firstly above assumed without previously obtaining a formal jugement.

5thly. As to prescription under the 113th and 118th articles of the coutume de Paris: Look upon that part, headed 7thly, (§§ 74 to 89) of the said W. Badgley's reply to the last or general interrogatory; also upon that part of the 13th cross-interrogatory relating to this subject and the reply thereto (§§ 23 to 29,) state your own views fully as to the extent to which the said 113th and 118th articles of the coutume would now, under such circumstances as 1stly above assured, be available to protect the title of the superior domain, assuming the laws which applied to the subject in that particular locality in 1783, and none others, to be applicable to such a case.

6thly. As to legislative changes between 1763 and 1783: Are you aware of any, and if so, of what political changes or imperial or provincial legis-

lation prior to the United States treaty, of 1783, which alters, from the position in which they stood prior to 1763 and under French rule, the abstract rights of the public domain as against its own grantees, of seigniories held under the tenure of the coutume de Paris, expressed in the said grant and confirmation (1750 and 1751,) and herein have regard, among others, to the 8th and 9th sect'n of the act 14 Geo. 3, commonly called the Quebec act, and state how far any such changes are, in your opinion, applicable to
929 the present case under the circumstances 1stly above assumed. See also section 1 to 10 of said W. Badgley's reply to said 13th cross-interrogatory and § 21 of his reply to the 7th cross-interrogatory, and state whether or not it is the case (end of § 10,) that the right of the crown to a reunion in such cases as the present (such right being considered in an abstract sense and as distinguished from the tribunals for enforcing the right) existed in the locality in question under the British government from 1763 to 1783; and is or not the point as to the existence of a tribunal for exercising the powers relating to the concession of seigneurial lands conferred on the governor and intendant by arret of 1711 and raised by the 22d question administered to the judges sitting at Quebec, on the 4th of September, 1855, under the 18th Vict., c. 3, (provincial,) generally considered a moot and unsettled point in Canadian law? and is it or not the fact that out of the twelve judges sitting, six judges replied in the negative and six in the affirmative thereto? and is it or not the fact that in reply to question 21, it was answered by some, and if so, by how many of the 12 judges, that the said arrets of 1711 and 1732 were in force at the time of passing the seignorial act of 1854? and is it or not the fact that in reply to question 23 it was answered unanimously that all the judiciary powers exercised by the intendant in civil matters, before the cession of the country, had devolved upon the ordinary civil tribunals of the province?

930 7thly. As to alienage and escheat by general laws of Canada apart from the laws of the coutume de Paris: Look upon the reply of said Wm. Badgley to the last or general direct interrogatory, under the heads 2dly, 3dly, and 4thly (§§ 12 to 50) of said reply; also upon that part of the said 13th cross-interrogatory relating to this subject, (at the end of said cross-interrogatory,) and the reply of the said Wm. Badgley thereto, (§ 30 of said reply,) also on the 4th art. of the treaty of 1763 therein referred to, and state whether and in what you differ therewith as regards De Bonne, and as to the Chevalier De Repentigny, who, notwithstanding the governor general's express personal remonstrances in writing, persevered in foreign allegiance and foreign military service until his death in 1786, and did not sell his estate to a British subject within the period of 18 months mentioned in the treaty. How were his rights, as against the British crown, to said previously abandoned seigneury, affected thereby at the time of the United States treaty of 1783, as regards his right to hold the same, as well as regards his right to transmit the same by descent? Was the common law of England in force in Canada at any time between 1763 and 1783? was it or not the law of Canada at any time between those dates that, as stated in Blackstone's Commentaries II, 245, in cases of escheat the lord might either actually enter or bring his writ of escheat. And assuming that the
931 crown did under the circumstances 1stly above stated, actually enter in or about 1765 without writ of escheat or office found, what effectual remedy had the said De Repentigny against the crown, he continuing an alien and absentee? and, in your opinion, would or would not the title of the crown so acquired be considered (under the circumstances 1stly above assumed) under the general Canadian law in force previous to 1783, and on grounds wholly distinct from the coutume de Paris, bad in equity, and its possession wrongful merely for want of the usual formalities, prior to entry for escheat?

8thly. As regards the subjects enquired after in the 6th cross-interrogatory: Assuming the state of facts firstly in part II of this 6th cross-interrogatory assumed, state your opinion: 1. Whether under the coutume the existence of a jugement, or under the general laws of Canada, previous to 1783, a record of office found, are, respectively, under the circumstances, absolutely essential to the title of the respondents in equity. 2. How far such jugement or record of office found, respectively, are to be considered a mere matter of form. 3. To what extent the absence of such jugement or record of office found, (assuming that there is now none to be found,) may be, respectively, considered as having been cured, or their existence now presumable, from possession for such a lapse of time and the other
932 circumstances of the case. 4. Whether or not from your knowledge of the practice of the law in ancient times and of the archives of Canada, it is possible that such jugement may have been pronounced, or such office found, or some equivalent proceeding taken and perfected, without any proper record thereof having ever existed, or at least without the record thereof being now forthcoming from or even existing in the proper office; and herein have regard to §§ 3 to 6 of said Wm. Badgley's reply to the 13th cross-interrogatory.

Seventh cross-interrogatory, as to Franquet's map: Look upon the 16th interrogatory, the 16th cross-interrogatory, and the replies of Pierre Louis Morin, Joseph Bouchette, and of the said Wm. Badgley to each, respectively. What can you say from your knowledge of Canadian topography, history, and records, or otherwise, concerning the accuracy of the maps of Canadian seigneuries made by Franquet, and do you believe that he surveyed or caused to be surveyed the seigneuries in each case by actual measurements or in any other and what special manner as regards each seigneury? or do you, on the contrary, believe that for mere military purposes, connected with the general defence of the frontier, he laid the boundaries down roughly, and by guess, with a view rather to shew the general location of the seigneury than accurately to define its boundaries,
933 and what, other than the words of the grant thereof, do you believe to have been his authority for the location of the boundary lines of seigneuries in the maps, which bear his name, and especially in the present instance, where the description of the boundaries in the grant and confirmation of 1750 and 1751 is uncertain by reason of its specifying the point at which the "frontage" therein referred to begins or ends; especially, what do you suppose to have heen his authority for the location of the west and south boundary lines? Where are the "descriptive memoires of the localities," and which are mentioned by said Morin as having accompanied the said map when transmitted to the king of France? State the purport of them as regards the seigneury in question. Why are not the same or a copy thereof produced? State all you know with regard to these descriptive memoires. What was the ancient practice of the French crown in fixing the boundaries of seigneuries? Especially state were or were not the "calls" or descriptions of the parcels usually vague and incapable of definite location, in view of their being afterwards defined accurately by an official survey, duly returned and recorded, and in what office were such official surveys, if any, recorded, and where should they now exist?
934 Eighth cross-interrogatory, as to the presumption of sub-tenancy from mere proof of possession. Look upon the last paragraph of said Wm. Badgley's reply to the 17th direct interrogatory, and state whether and in what you differ therewith, and especially are you or not of opinion that, according to the coutume de Paris, occupants of lands, which may have once formed part of an abandoned seigneury are, from the fact of occupacy alone, to be presumed to be seigniorial sub-tenants or

censitaires, and this without proof of payment of rent, or any other incident to an inferior tenure; and in this respect was or was not the law of the coutume the same as that of England, namely, that proof of possession without proof of payment of rent is prima facie evidence, and raises the presumption of an estate corresponding to seizin in fee in the occupant?

Ninth cross-interrogatory, as to the municipal law to which the seigneury was subjected: Look upon that part of the said Wm. Badgley's reply to the last or general direct interrogatory relating to this subject, and headed "fifthly," (§§ 57 to 64,) and state your own opinion thereon.

Tenth cross-interrogatory, as to the proof of alienation by the said
935 De Bonne to Caldwell: Look upon that part of the said Wm. Badgley's reply to the last or general direct interrogatory relating to this subject, and headed "sixthly," (§§ 65 to 73,) and state your own opinion thereon.

Eleventh cross-interrogatory. Look upon the 8 additional cross-interrogatories, and the replies of the said Wm. Badgley thereto, and give your own opinion on the same, respectively and especially. As to the 4th additional cross-interrogatory, and the reply thereto, near the end of said interrogatory, after the words "under the laws of Canada prior to," instead of the date, "1820," read "the United States treaty of 1783," and say whether or not you agree that, on the facts as therein stated, the widow of Gaspard did not take any interest in the shares of her sons, who died unmarried and childless, particularly in the share of her son Louis, who survived Camille, and as to the 5th additional cross-interrogatory, (at the beginning thereof,) after the words "under the laws of Canada prior to," instead of the date, "1820," read "the United States treaty of 1783," and (near the end thereof) after the words "under said laws prior to," instead of the date, "1796," read "the United States treaty of 1783," and be particular in replying to the last section of said 5th additional cross-interrogatory, to which section the said Wm. Badgley has not replied.

936 Twelfth cross-interrogatory. Have you had any communication, written or verbal, with any one, especially with the Hon. Wm. Badgley, or with any one on his part, in connection with the opinions entertained by you with regard to the matter now enquired of? If so, state fully the purport and particulars of every such communication, and state especially the extent, if any, to which you have received assistance or suggestions from any one and from whom, in preparing your replies; and have you, at any time previous to your present examination, expressed any opinion upon any point in this case; and if so, at whose instance and suggestion, and to whom, and have you received any compensation or promise of compensation for your opinion or for your testimony? When and from whom did you first hear of this case?

Thirteenth cross-interrogatory, as to mere refusal to render military service when called on and mere absenteeism: State, having regard to the definition of the word "fief," by Pothier, (Traite des Fiefs, part 1, ch. prelim. §1–3,) whether or not the feudatory of the fief in question was liable to render military service, when thereto called by his feudal superior, and how the title of feudatories and the heirs of feudatories of the crown of France to seigneurial lands, in the locality and under grants in the form of
937 those in question would have been, in and previous to 1763, affected under the feudal laws then and there in force, by the mere refusal of the feudatory, through whom the heirs might claim by descent, to render military service, and by his preference of foreign allegiance and foreign military service, followed by absence of the seigneur from the seigneury and from the realm for so long a period as in the present case, but independently of the other circumstances of the case, *e. g.*, abandonment of the

seigneury by tenants, as well as by the seigneur, adverse possession by the crown and acquiescence of the seigneur.

Last or general cross-interrogatory. Review the testimony of the said Wm. Badgley generally in all matters of legal opinion and facts connected with the administration of the law or with the general history of Canada, as distinguished from the special facts of the case, to which he deposes, and state your own views. Do you know or can you set forth any other matter or thing which may in anywise tend to the benefit of the said respondents in this cause? If so, set forth the same and all the circumstances and particulars thereof, according to the best of your knowledge, remembrance, and belief, together with your reasons at large.

(Signed) ALFRED RUSSELL, *Sol. for Resp'ts.*

938 The foregoing cross-interrogatories are allowed by the consent of the counsel for the petitioners, subject, however, to all objections to them and to all testimony that each witness may give on the ground of incompetency or irrelevancy, and said counsel expressly reserves to the petitioners the right to object to any part of said cross-interrogatories or to any answer of a witness upon the ground that the same is incompetent or irrelevant upon the final hearing of the case.

Detroit, Aug. 19, 1863.

(Signed) J. M. HOWARD,
Sol. for Petitioners.

939 The Honorable James Smith, having first taken the oath mentioned in the foregoing commission, testifies as follows, namely:

To the first direct interrogatory he says: My name is James Smith; my age fifty-five; my residence Montreal; my profession the law; my vocation a judge of the superior court for Lower Canada, which office I have held for upwards of sixteen years, having formerly practised the law as a barrister of that province for upwards of twenty years, the last three of which I was attorney general of the province. That court exercises original civil jurisdiction throughout Lower Canada, taking cognizance of and determining, in the first instance, all civil pleas and causes, as well those in which the crown is concerned as all others except purely admiralty cases, and those within the subordinate jurisdiction of the circuit court. My practice as a barrister and my official duties as a judge have led me to acquire a full knowledge of the ancient and modern laws and usages of Canada, including the coutume de Paris, as it relates to real estate and tenures, and of the modes and manner of their administration. I read, speak, and write the French language
940 with facility and accuracy, and have made a study of the French law of Canada, written and customary. From study and professional practice I have also become acquainted with the principles of the common law of England.

To the second direct interrogatory he says: I have known him for upwards of thirty years. He has recently been appointed assistant-judge of the court of queen's bench for Lower Canada, having for upwards of seven years preceding been a judge of the superior court. He was a barrister for upwards of thirty years; he has been attorney general for Lower Canada, and has held other legal and judicial offices. His attainments, in my opinion, are of the highest order; his character and reputation for law learning on these subjects entitle him to rank among the first jurists of Lower Canada.

To the third direct interrogatory he says: I have looked upon the said document now shown to me and referred to in this interrogatory. I have heard it read, and considered its contents; it is annexed hereto.

To the fourth direct interrogatory he says: Having heard read and con-

sidered the said deposition and answers particularly referred to in this interrogatory, and specially to the said fourth division of the fourth, to the said seventh, thirteenth, and sixteenth direct interrogatories, and to
941 the last or general direct interrogatory, and to the said several cross and additional cross-interrogatories enumerated in this interrogatory, and having also read the said two printed papers referred to, namely, the said concession and its ratification, I declare my concurrence with the legal opinions and conclusions expressed by the said Honorable William Badgley in his said answers, and as to his statements therein respecting the history of the said law, its principles, practice, and administration in reference to the said special subjects particularly enquired of in this interrogatory; and it is also my opinion that the said fifth article of the said declaration of 1743 did prohibit and render null and void all reunions not pronounced or declared by the governor and intendant or their respresentations as therein mentioned.

To the last or general direct interrogatory he says: I desire to add the following in elucidation of my general concurrence with the Honorable William Badgley and in conformity with the requirements of this interrogatory:

1. As to reunion: In itself it is the fact of the reunion of alienated property to the property from which it had been separated and is the effect of the exercise of a legal right or privilege claimed and demanded either through proceedings at law resulting in a judgment or decree of a competent court or through a legal title of acquisition, as purchase, marriage, donation,
942 &c. During the French regime in Canada and subject to the feudal law of the coutume the king, as suzerain or dominant seignor, was enabled to bring back to the public domaine a granted seignory or fief servant when liable to reunion; but for this it was essential that a judgment or decree of appropriation should be first obtained, by which the forfeiture and cancelment of the grant was effected and which deprived the subordinate seignor of his property. The reunion took effect, *eo instanti ipso facto*, or *de droit* or *de plein droit*, as so termed, upon the obtaining of the primary judgment, and the two estates thereby became one property in the hands of the suzerain seignor. No such reunion could take place where the original title remained undisturbed by legal proceedings and judgment. The first arret of 1711 was the first special royal legislation upon the subject which ordered proceedings to be had at law by the attorney general and a judgment of reunion therein to be obtained; the royal declaration of 1743 affirmed the previous arret, and enacted a general course of procedure for all the French colonies to which the king subjected himself, namely, the obtaining of a decree or judgment of reunion upon the legal proceedings instituted by the attorney general.

943 2. As to prescription: Prescription, whereby real property is acquired by possession during a legally limited period of years, is considered by the French law of Canada, and is also universally treated by all jurists, as an alienation and mode of acquisition to be governed by the same law which decides upon the validity of the alienation of real estate, namely, the law which prevails in the place of its situs; hence, in like manner as for acquisitions of real estate by succession or by last will and testament, prescription is governed by the municipal law of Canada, the *jus civile*, and is a right which belongs exclusively to subjects and citizens of the country. Mere possession for the legal period is not sufficient to support prescription without the legal capacity or status of the possessor to acquire by prescription. Foreigners, therefore, cannot have this right, because, although with citizens they enjoy the communioneur of the *jus gentium*, they cannot with citizens have the communioneur of the *jus civile*.—(See Pothier's Trea-

tise of Prescription, No. 20.) Prescription is also a real law, applicable only where the realty is situated. Jurists concur in this, and unanimously hold that resort must be had, not to the law of domicile of the controvertial parties, but to that of the place where the property is situated—"aut statutum disponit de prescriptione aut usucaptione rerum corporalium sive mo-
944 bilium sive unmobilium et hinc inspicitur indistincte locus ubires est."—(See 3 Burge Colonist Laws, p. 122, with his citations, Stockman Deces. 125; Molinaeus ad Cod., lib. 1, tit. 1, p. 557; Bouvier sur la Coutume de Bretagne, c. 35, § 52; Pothier, as above, is cited, Vict. lib. 44, tit. 3, sect. 12; Merlin Reports de Jurisp. verbo. prescription, sect. 1, § 3; and Pothier, same treatise as above, No. 247.) Pothier further observes, at No. 250, that, as regards seignories, "they are held in law to have no other situation than that of the different properties which make up the dominum of feudal superiority which constitutes the seignory;" and this is the French law of Canada. Prescription being the law, an alienation cannot operate or run during the minority of the owner of the property to be subjected to it, because during his minority the French law absolutely denied him the power of alienation or of abandoning his property, and has, therefore, prevented him from losing it either by abandonment or prescription. Both the 113th and the 118th articles of the custom which regulate prescription expressly restrain the operative effect of this mode of acquisition to persons of age, (entre ages,) that is, persons who have attained the legal age of majority. By the common and customary law of Paris majority was fixed at the age of twenty-five years, which was changed to twenty-one years by the provincial act of 22 Geo. III, c. 1, which itself was not to have effect
945 until the 1st January, 1783. Prescription, therefore, if it had any application, could only begin to run from the said last-mentioned date fixed for the coming of the act into operation. The said 113th and 118th articles have established absolute and essential conditions for its regulation and for giving effect to prescription. The former article requires the possession to be commenced with a just title and to be continued throughout its limited period of 10 or 20 years in good faith; that is, a just title of acquisition or regular conveyance capable of transferring property such as sale, legacy, &c., and good faith, that is, a continuous belief by the prescriber in good faith that the acquisition was made from one who he honestly believed was the owner and had power to dispose of the property; another essential was that the possession itself, during the limited possession, should be continuous, open, and uninterrupted, or, in the terms of the article, franchement et sans inquietation. The latter article requires an actual use, occupation, and possession of the entire property for 30 years, continuously, by the prescriber and his predecessors, freely, openly, and without any disturbance; in the terms of this article, "continuellment taet par lui que par ses pre-
946 decesseurs, franchement, publiquement, et sans aucune inquietation." If the kings of France or Great Britain could legally set up prescription under the French law of Canada they would necessarily be subjected to the positive requirements of these articles according to the particular prescription claimed. The former had manifestly no right of prescription to urge or exercise against any part of the said seignory in contest in this case; and the latter could not begin to claim the exercise of this right until after the 1st of January, 1783, previous to which, by the provisional treaty of peace of 1782, agreed to by the king of Great Britain, the independence of the United States was acknowledged and their several territories freed from the jurisdiction of French Canadian law and from dependence upon or connection with the territory of Great Britain, the seignory in contestation passing thereby under the jurisdiction and into the territory of the United States. Moreover, the king of Great Britain, as suzerain and dominant seig-

nor, by the act of fealty and homage accorded to said De Bonne, in February, 1781, had recognized him as proprietor in possession of an undivided moiety of the entire seignory of Sault St. Marie, which was in law a recognition of the possession of the entire seignory enuring to the benefit of his coproprietor, the Chevalier de Repentigny, and it was also without any possessary reservation of or claim either in that entire seignory or in any part thereof
947 which could not have been if any such possession by the crown had existed. Prescription does not, in any circumstance, effectively extend beyond the specific portion or piece of land actually in possession of the prescriber, it being a principal of law that the occupant is not deemed to be in possession of more than his occupation covers; so, also, in the case of absolute abandonment of real property, there must be actual occupation for the time limited to give it prescriptive effect. In many of the granted frontier seignories of Canada posts were established and forts erected by the king for military purposes or for the protection of settlers, and generally in the original deeds of seignorial concession, as in that of the seignory of Sault Ste Marie, an express reservation is made by the king of his right to take so much of the granted seignory as should be needed for the erection of such posts, forts, batteries, places d'armes, magazines, and other public places. By no possible construction of law was this military occupation or possession of a plot of land for the construction of a post or fort, an ouster of the grantee from his seignory; on the contrary, the crown, in stipulation in the concession, itself is relieved from indemnity to the seignor for the land taken, only when it was applied to military purposes. It was in fact a mere servitude, and upon the cessation of the military occupation the plot
948 of land reverted to the seignor proprietor. Prescription, under the said articles of the custom, had reference to controversies between individuals, but did not apply in favor of the crown or government in respect to its grants, the established rule of the law in this respect being that none can prescribe against his title; in other words, that no party can by prescription set aside his own grant; and hence, the crown could not by prescription or adverse possession, for any period of time, in effect annul its own free grant of the subordinate seignory. Pothier's Treatise of Prescription and Bourjon's Droit Commun de la France, in 2 vols., fol., are books of authority recognized by the courts of law in Canada.

3. As to fines on seignorial mutations: These were charges under the feudal law of the coutume upon the acquisition of seignorial property either by purchase or succession, and were payable by the acquired. 1st. Upon the purchase of a seignory, or an aliquot part thereof, a quint arose, being 1-5th of the purchase money. 2nd. Upon the succession to such property a relief arose, being one year's revenue of the seignory, or a sum of money agreed upon in lieu of it. Relief arose only on acquisitions by collateral successions; never by lineal or direct succession, as from father to child. The 33rd article of the custom of Paris provides: "Pour icelles mutations de
949 fief, qui se font par successions, ou par donations en ligne directe n'est rien (relief) du," "No relief is due for mutations of fiefs by lineal successions or donations." No relief or fine of any kind was due by the said Pierre Amable de Bonne either to the French or English governments. The law of the custom for relief, applicable in France, was never applied, and became a dead letter in Canada, no such fines having ever been demanded or enforced here for collateral successions. De Bonne's alienation to Caldwell and Caldwell's conveyance to Noble, in 1794 and 1796, respectively, created no seignorial fines, the property at that time being included in the territory of the United States, where it was freed from its original feudal subjection and character, and therefore no such fines, the creatures of French feudal municipal law, could attach to it. This

principle is laid down as law by our French jurists, "Vente de fief entant que fief seule donne droit aux quints; ces profits cessent loque les rapports de la feodalite cessent," "The sale of a fief where it is a fief alone gives right to quints; these feudal profits cease so soon as its connection with feudality has ceased."—(See 3 vol. Terriere's Comm. on the Custom of Paris, p. 84.) Under like circumstances, upon the division of the province of Quebec by the imperial act of 1791 into the two provinces of Upper Can-
950 ada and Lower Canada, French grants of the seignories located in the former division fell within Upper Canada and lost their feudal character and connection. Feudal fines and dues of all descriptions therefore ceased, and feudal tenures have never been legally known or recognized there as if they had not existed, inasmuch as the law of England being established in that division of the province recognized the only tenure therein to be that of free and common soccage. In the same way the tenure of lands held in the townships of Lower Canada, granted since the cession of 1763, having been granted by the sovereign under English grants of free and common soccage, the French seignorial tenure and feudal rights have never had legal effect or force, and is altogether unknown to them. Of such are the lands which compose the judicial district of Sherbrooke, in this province, in which Messieurs Sanborn and Felton, witnesses named in a commission for their examination in this case, reside, and where they have practised the law.

4th. Operation of the 51st article of the custom, its application to the sale by De Bonne to Caldwell: The Chevaliers De Bonne and De Repentigny, under the grant, were coproprietors par indivis in the entire seignory, each in tota et in qualibet parte, and necessarily covassals. By his succession to his father the said Pierre Amable de Bonne became also copropri-
951 etor par indivis and covassal. By law either might dispose of his share or moiety, provided the feudal subjection was retained and continued as before the alienation. The prohibition of the article against the sale of more than two thirds of a seignory without reservation of feudal subjection legally implied merely that the sale or jeu de fief of a greater quantity without such retention would give the dominant seignor right to claim his dues as upon the sale of the entire seignory. The prohibition was not absolute against the disposal of a whole seignory or a portion larger than the limited quantity, but only that the disposal of the limited quantity created no dues to the seignor which would ensue if more than the limited quantity or the entire seignory were disposed of. The limitation was therefore truly in the financial interest of the dominant seignor for the security of his feudal fine, the quint, upon the sale. The article did not so interfere with the sale either of the whole or of the excess, but in such cases feudal dues arose upon the whole which otherwise would not By deed of sale, the purchaser becomes the covassal in the seignory in place of the vendor, and the entire seignory continues subject to the dominant seigneur, as before the alienation. This is merely the jeu de fief avec profit, not the demembrement of the article. "Le proprietairie du fief en vend une partie, cette division de domaine est sans influence sur le titre; l'acquereur tient sa por-
952 tion sous les memes droits et devoirs que le surplus du fief, il le reporte au meme dominant sous la meme foi, sous le meme titre et comme partie integrante du fief dont elles est detachee," "The owner of a fief sells a part of it. This division does not affect the title; the purchaser holds his parcel subject to the same rights and duties as the remainder of the fief, acknowledging the same dominant seigneur, under the same fealty and title, and as an integral part of the fief from which it was detached."—(Sec. 1, Guyot Traite des Fiefs, pp. 121. 2, and seq.)

The prohibited demembrement of a fief is its conversion into several dif-

ferent fiefs independent of each other, self-subsisting per se. The jeu de fief continues the one fief only. The former multiplies vassals; the latter retains the same vassalage as before the alienation. The former establishes several tenures susceptible of having different conditions, whilst the part joue continues to be subject to the same original feudal dues and duties. In fine, the demembrement attacks the title of investiture, whilst the jeu de fief does not interfere with the primitive law. Had the property remained in Canada subject to her French feodal system of laws, the sale by De Bonne to Caldwell would nevertheless have been quite legal, as well at that from Caldwell to Noble, such sales having constantly been made, and a large amount of quints received therefor by the crown. The arret of 1732 did not affect De Bonne's sale of his part of the seignory. This arret did not intend or apply to such a sale, but was made to compel seignors to sub-grant their seignorial lands under the usual quitrents, and to prevent them from selling plots or parcels for money paid.

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Under the law of Canada, it has been held in the last resort by the court of appeals that a notarial title, made in the legal form with the stipulation of the dessaisine and of the transfer of the title, is a complete deed of conveyance, carrying with it both the right of property and of possession, the seisin of the English and the tradition of the French law, and applies to conveyances of wild lands, which are held to operate complete title without livery of seizin or tradition.—(See 3 Lower Canada Reports, Stuart & Robinson, p. 310.) This is also in agreement with the decisions of the Supreme Court of the United States, which holds, upon reasonings in conformity with our laws, that conveyances of wild lands operate complete title without livery of seizin.—(8 Cranch Reports, page 219, Green *v.* Litle *et al.*) So by the law of England prevailing in Upper Canada, equity will supply livery of seizin when sufficient consideration is shown.—(Compton's Digest, Feoffment, B. 4; Creuse's Digest, 52; Finch Rep., 28; Petersdorff Abr. vol. Livery, pp. 345–6, and finally, "with title, seizin gives possession coextensive with the title, but without it title is confined to metes and bounds," 5 vol. Upper Canada; 2 B. Reports, pp. 136–7, per Ch. J. Robinson, 1 Serg. & Rawle, 100; 1 Pennsylvania Rep., 458.)

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Boundaries under the grant.

The courts of justice in Lower Canada are frequently and necessarily called upon to settle questions and actions of bornage or boundary of real estate, and to determine upon and give effect to the construction and extent of the terms of original grants from the French crown of seignorial property. I have carefully examined the language of the concession of 1750; and of the said letters patent of ratification of 1751, as well as the map of the said seignory of Sault Ste Marie, drawn by Franquet, shown to me, of which a copy is hereto annexed. The grant is in express terms of a certain known locality, the Sault Ste Marie, where a then long known and established portage existed. To this specific locality was added a quantity of land contained within certain specified extents, namely: "Six leagues in front upon the portage by a depth of six leagues bordering the river St. Mary joining the two lakes." It is a principle of law in the matter of bornage, 1st, that given extensions along sinuous or water lines are always measured by straight lines, leaving open the calculation of compensation to be taken or given for the sinuosities; otherwise the given extent could not be obtained; and 2d, that when natural boundaries are expressed in the grant they are to be adopted in construction. The grant concedes "le dit Sault Ste Marie," referring to the previously expressed "endroit nomme le Sault Ste Marie." The ratification uses "du lien nomme le Sault Ste Marie," a known place or locality, about which there could be no dispute or

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misapprehension. To this "endroit le dit Sault Ste Marie" is added "avec six leiues de front," having reference to "six lieues de front sur le portage," which the ratification expressly adopts as follows, namely, "six lieues de front sur le portage." The use of the word "sur" is exceedingly common in French grants and alignements or boundaries of property, and is not restrictive to a point. It is only indicative of a direction, as along a river or highway at length through any space or object measuring lengthwise. The portage in itself was of small extent and could not furnish the length granted, but being a known locality, it was assumed in the grant and taken as the indication where the front line of the grant should be drawn, and therefore the extent of "six leagues de front sur le portage" along the portage; that is, where the portage was situated was to be measured as the front or north side line of the concession. No doubt could exist upon the construction, but after the words "six lieues de front sur le portage" are added "sur six lieues de profondeur bordant la reviere qui separe les deux lacs," These terms are employed both in the concession and ratification. Thus is a given depth from a given front sur le portage, which portage is included in
956 the front side line, "sur la profondeur bordant la riviere," which could only be from the portage running in depth southwardly, and necessarily could not include that portage also in the depth or profondeur. The depth line, therefore, would run from north to south, the portage lying north, and the east side line would by the terms of the grant run in a southern direction, commencing from the foot of the portage and bordant, bordering the river St. Mary, which separates the two lakes. This line would of course be a straight line from north to south, without account of the sinuosities of the bordering river, and from its apex, its northern point, the front or north side line would be drawn from east to west in a straight line and necessarily at right angles with the depth line, the sinuosities in this line being also not there accounted for. These lines being established, the west and south lines follow of course. I have no hesitation in stating that this would be the legal construction given to the grant and would be the judicial direction or order for settling the boundaries under the terms of the grant. This would, moreover, be in conformity with the Franquet map, which, although necessarily roughly drawn, manifestly indicates that the front and east depth lines were assumed as straight lines not counting the sinuosities on either, because the west and south lines are drawn at right angles to those implied
957 north and east lines, and that the northern and eastern lines were drawn by him from the apex of the angle below the portage. The map itself, as an official document taken from the government archives, would claim and receive full consideration and credit from the courts in this province, and in a contest with the crown would not only remove any possible vagueness and ambiguity which might exist in the terms of the grant, but would also be adopted as a practical exposition and construction put upon the grant by the government itself, and as laying down the boundaries of the seignory. These lines appear to be in general conformity with the direction of boundary lines to be given by surveyors to Canadian seignories after 1674 by an arret de reglement of that year of the special council of Quebec, which ordered that two lines should be laid down at Quebec, northeast and southwest, and two others southeast and northwest, for the direction of boundary lines of royal concessions thenceforward. This arret, or reglement, was enforced by the general arret de police of 1676; these directions were made to apply to concessions on the River St. Lawrence, but necessarily yielded to the circumstances of the locality of the grant and to the express terms of a concession in which a particular boundary is set out, such as the depth-line of the Sault Ste Marie concession, to run down the river bordering the two lakes, in which cases the arret yielded; however,

958 it was not absolute for all the country, as by a judgment or arret of the superior council, in 1722, upon a contention between adjoining seignories on the Ottowa or Grand River, another direction was established for the lines of seignories on that river, namely: that they should run in the same directions as directed by the judgment, both for the front and for the depth, namely: for these courra de l'est quart de sud est a l'ouest quart de nord ouest et pour la profondeur du sud quart de sud ouest au nord quart de nord est, (see 2 volume Edits et Ordonnances, pp. 176–180,) running from east ¼ southeast to west ¼ northwest, and for the depth from south ¼ southwest to the north ¼ northeast.

Under all these circumstances, therefore, the lines in the Franquet map appear to have been laid down in general agreement, not only with the express terms of the concession and ratification, but also according to the directions of the arret of 1676, as nearly as the natural configuration of the land itself and the terms of the concession would allow.

(Signed) J. SMITH.

Sworn and subscribed before me, at Montreal, this tenth day of October, A. D. 1863.

(Signed) W. RITCHIE, *Com'r.*

959 To the first cross-interrogatory he says: In my answers to the first direct interrogatory I have replied to the several inquiries propounded in this cross-interrogatory.

To the second cross-interrogatory he says: I have read the said documents.

To the third cross-interrogatory he says: I have looked upon the said direct and cross-interrogatories, and upon the said replies thereto respectively, of the said William Badgley, and I concur with him therein, and specially said sections 7 to 11 of his said reply to said cross-interrogatory as to the said 51st article of the coutume. The said article did not apply to the said sale of the seignory as therein inquired of, nor to such cases as the said sales from De Bonne to Caldwell, and from Caldwell to Noble, as in the said petition mentioned.

To the fourth cross-interrogatory he says: I have looked upon the said several direct and cross-interrogatories mentioned in this cross-interrogatory, and upon the said replies of said William Badgley thereto respectively, and also upon the said enumerated sections of his said reply to the said twelfth direct interrogatory, and I state that I agree with him therein; but I would add to the latter part of his answer to the 14th cross-interrogatory that relief was due under the custom only on acquisitions by collateral successions, but that it had never been enforced in Canada, and the law
960 had ceased to have effect. I have nothing further to add to what is contained in his said replies. No fines accrued, and no interest was due; interest would only become due for non-payment of fines due upon an action at law for their recovery from the seignorial acquirer.

To the fifth cross-interrogatory: I have looked upon the said 12th direct and cross-interrogatories, and upon the said reply to each respectively, and upon the said sections 1 to 14 of said reply to the said 13th direct interrogatory, and upon said section 1 of his said reply to the said 13th cross-interrogatory; I do not differ from him in his said replies; the words de la mettre en valeur, of the ratification, and not in the concession, are merely synonymous with the words "de deserter et faire deserter la dite terre," of the concession, and not in the ratification. The particular words cited with reference to the act of fealty and homage are not suspensive of the benefit of the act, because the duty was actually performed by the seignor in form, and accepted by the governor without objection. The selected words cited are

a mutilation of the governor's entire direction in this respect, which was simply for the exhibition of the ratification of the concession, to shew the fact of its having been issued by the king.

To the sixth cross-interrogatory he says: I have looked upon the
961 said 13th direct and cross-interrogatories, and the said replies of said William Badgley to each respectively, and especially division I. As to the said reply to the said 13th direct interrogatory, I fully agree with him, §§ §§ 15 to 18, that no real difference exists in the said words of the said grant and of the said confirmation, and that no such legal distinction exists as that inquired of in this portion of this said cross-interrogatory; under any circumstances of fact, whether those assumed in this cross-interrogatory or others, a judgment was indispensable to the title of the crown or government. Letters patent do not become void *ipso facto*, and whilst entire and unimpugned the crown could not, *ex mero motu*, arbitrarily set them aside and make title to itself against them; the grant was conditional upon the performance of facts to be ascertained by evidence, and which could not be done without notice and legal proceedings against the grantee. I know nothing of the reality of the facts stated under paragraphs 1st, 2d, 3d, 4th, and assume that they are hypothetical. As to the 1st: Their importance and weight would be solely in the consideration and judgment alone of the tribunal specially appointed to decide upon them, the French governor general and intendant, jointly. As to the 2nd: The reception in fealty, in February, 1781, concluded the crown against the assumption of abandonment, which, moreover, could not be during the minority of De Bonne up to 1783;
962 whilst the stipulations of the treaty of 1794 estopped both governments, and protected owners in their right to their property which had passed to and become portion of the United States territory. As to the 3d: Foreign allegiance or military service, notwithstanding the assumed alleged remonstrance of the governor, did not of themselves debar an alien from legally holding his acquired property situated in Canada. And as to the 4th: Adverse possession, as known to English law, could not exist in Canada by the British government; if synonymous with and in the nature of said prescription to acquire, that has been explained already. I will not undertake to say anything of such possession by the United States if it existed; I presume the lands would belong to some State of the Union. The British government held no such possession. As to that of the United States government, I am not informed, and know nothing.

As to portion marked 2ndly: I repeat that such judgment was absolutely indispensable to the title of the crown under the said arret and circumstances stated, and such lands could not be held in law, or become reunited *de facto*, under the arret of 1732, without such judgment.

As to the said portion marked 3rdly: Such lands inquired of affected by the said §§ 3 of the arret of 1732, there is no question that they did not stand so reunited *de facto*, without such special judgment, under any
963 circumstances of fact. The full force of the said words inquired of is simply that such lands would be so reunited after legal proceedings had for the purpose and thereon a judgment rendered.

As to the said portion marked 4thly: The arret of 1743 was a general law governing reunions generally, and regulating the mode and manner of proceeding to be observed; therefore these provisions could not be departed from.

As to the division marked II of this cross-interrogatory: I have looked upon the same and upon the said sections, §§ 1 to 11, of reply to the last or general interrogatory.

As to the portion of this division marked 1stly, as to the lands being in a position of meriting reunion: That position was of course matter of fact, to

be ascertained in a legal manner by the competent tribunal having jurisdiction to adjudicate upon it. The terms meriting reunion are merely legal expletives indicating the liability of a grant to reunion under a certain proved condition of things; the entry of one co-grantee enured to the benefit of the other, and upon a part for the whole, was an entry upon the whole grant. The British crown did not enter, but on the contrary admitted De Bonne's possession in February, 1781, of the undivided moiety of the whole seignory as proprietor and co-possessor with De Repentigny, which was a legal possession of the whole, as before stated, without claiming or alleging
964 any co-possession by itself. The crown of Great Britain has not made any such grant. It had estopped itself absolutely and effectually under its agreement by the treaty of 1794 from interfering with De Bonne's power and right to sell and dispose of his previously held and acquired property as he thought proper. The said conditions of the grant inquired of appear to have been sufficiently complied with. I believe that the reunion of the French law is not known to and forms no part of the laws of Michigan.

As to the said portion marked 2ndly, as to Canadian precedents: I do not know, nor have I heard of any such case, nor do I believe that any such case has occurred in Canada.

As to the portion of this division marked 3rdly, as to Canadian rules of equity: There are no such rules of equity synonymous with the English and American law or rules of equity. I repeat that no such reunion could be had without such previous judgment. The remainder of this portion is not in such form as to enable me to answer it.

As to the said portion marked 4thly, as to the will of the crown being the essence of the operating power whereby reunions were effected: I have looked upon the part of the 13th cross-interrogatory relating to this subject, and upon the said arrets, and the said judgment of tenth May, 1741, and the reply of said William Badgley to the said cross-interrogatory (§§ §§ 13 to 19) relating thereto. and I have looked to
965 the public documents connected with the said company of New France in 1663, and of the West Indian Company in 1674, and of the province of Acadia in 1703. Both of these companies made surrenders of their grants, which were accepted by the crown, and the shareholders of the latter company obtained an indemnity of 3,500,000 francs in consequence of their surrender. Upon these surrenders the crown took possession; the reunion of Acadia was upon the judgment of the council of state, acting judicially upon conflicting claims thereto. From the date of the arret of 1711, which constituted a judicial tribunal to adjudicate upon reunions, according to law, followed by the subsequent enactments of 1742 and 1743, whose provisions have not been interfered with, the only operation of the will of the crown has been to order the adoption of legal proceedings against negligent seignors; no doubt restitution and indemnity would follow legal informality in the exercise of prerogative, but I am not aware of such a case.

As to the portion of this division numbered 5thly as to prescription under the 113th and 118th articles of the coutume de Paris: I have looked upon the said part headed 7ly (§§74 to 89) of said William Badgley's reply to said last or general interrogatory relating to this subject, and the reply thereto (§§ §§23 to 29.) The said reply and my answers upon this subject
966 to the last or general interrogatory explain fully the effect of these articles, and could not be made in 1783 to protect a title in the superior domain, which title did not then exist.

As to the portion of this division marked 6thly, as to legislative changes between 1763 and 1783: After the proclamation of 1763, which required the laws to be administered in the colony as near as might be conformably with

the laws of England, the first change was by the Quebec act of 1774, which protected all Canadian subjects in their possessions and property, with their customs and usages, and restored the French law for the decision of controversies relative to property and civil rights. This act had no reference to imperial and governmental or administrative rights and attributes. This act was followed by the provisional treaty of peace of 1782, which put an end to the war and recognized the independence of the United States and of their territories. The public domain, or the right thereto, did not exist as to the seignory in quesition in this case previously to the treaty of 1783. The right of the crown of Great Britain to a reunion did not exist in the locality in question during the period inquired of. As to the existence of the said tribunal inquired of, raised in the said 22d question proposed to the said judges, the point was not settled, as they were equally divided in opinion upon it. The question in itself had no connection with the
967 subject-matter submitted to the judges. It is a fact that in reply to said question 21, it was considered by a considerable majority of the twelve judges that the said arrets of 1711 and 1732 were in force in 1854. This last-mentioned question was one of a series, from the 16th inclusive to the 23rd, having relation to the tenure of sub-grants in seignories to tenants, which the ancient laws, the arrets of 1711 and 1732 required to be at a quitrent, and not to be by sales for money. It was this legal effect of those arrets that was inquired of in those questions, and whether for such purpose they were in existence in 1854, when the act for the abolition of the seignorial tenure was passed, but the questions had no applications to the titles of seignories or the power of the governor and intendant to interfere with them. The arret of 1732 applied to wild lands in the seignories, which were being sold instead of being sub-conceded to settlers at a quitrent, but did not apply to the sale of a seignory or a quotity thereof; and it is also a fact that in reply to the said 23d question to the said judges they all concurred in opinion that the judiciary powers of the intendant had devolved upon the ordinary civil tribunals of the country; but it must be here observed that the judicial powers of the intendant, individually, were the ordinary judicial powers over civil controversies, including the enforcement of sub-contracts entered into between the seignories and their censitaires for the improvement of the sub-grants and the cancelment of those
968 contracts in case of non-performance of the contracts by the censitaires, but did not extend to proceedings by the attorney general, at the suit of the crown, against negligent seignors, which were intrusted to the governor and the intendant jointly, under the arret of 1711 and the declaration of 1743.

As to the portion of this division numbered 7thly, as to alienage and escheat, &c.: I have looked upon the said reply of said William Badgley to the said last direct interrogatory under the said heads 2ly, 3ly, 4ly, of said reply; also upon the part of said 13th cross-interrogatory relating to this subject, and his said reply thereto; also on said 4th article of the treaty of 1763, and say that I do not differ with him as regards said De Bonne and said Chevalier de Repentigny. Their rights were not affected thereby at the time inquired of. The law cited from Blackstone was not at any time the law of the province of Quebec up to its division into two sections by the act of 1791, nor since that time of the province of Lower Canada. De Repentigny's effectual remedy was the writ of right. Had the crown entered, the title of the crown would be bad and wrongful, not from mere informalities, but absolutely under the laws of Canada.

8ly. As to section 1 of this division: A judgment or record could not be dispensed with. The respondents, the United States government, could not claim any possible title previous to the treaty of 1783, nor since,

969 except under general enactments of Congress, of which I am ignorant. As to section 2, the matters inquired of were essential in law, and not mere matters of form. As to section 3, the absence of either enquired of, these being matters of record, could be cured or rendered presumable by such said lapse of time, or by said other circumstances of the case. As to section 4, it is not possible; the records and registers of the tribunals are complete, and, if such judgment or proceeding had existed it would be found without difficulty.

To the seventh cross-interrogatory he says: I have looked upon the said 16th direct and cross-interrogatories, and upon the said several replies referred to. I can say nothing and know nothing personally respecting the said maps, either as to how or why they were drawn, except that as official maps in the possession of the government, for whom they were prepared, they would be quite effective against the government as to the locality of the grants, and as to the general correctness of the lines laid down in them. In the grant of the Ste Marie seignory the word portage is evidently used to indicate simply the grant as being to the north, where it was situated, and points out the north side line. The grant also gave a natural lateral boundary in depth, which indicates the easterly side line of the grant. In grants on rivers or irregular configuration of bound-
970 aries, a straight line is drawn across the front, or in the depth, without regard to the sinuosities of the stream or land, and compensation is given aliunde. The Franquet map precisely and clearly explains the intention of the government, as conveyed in the terms of its grant. As the correctness of the map does not seem to have been questioned it would be judicially sustained here if this grant were in controversy. No real uncertainty appears to exist, and the point of departure can be readily ascertained. The west and south boundaries would follow the establishment of the east and north lines. I know nothing of the said memoirs nor of their contents. The ancient practice of the French crown was to make the grant upon the description of the parcels or calls furnished by the applicant. The boundaries afterwards became defined by survey, either specially by the government surveyors or by those selected by the applicants. The original descriptions were necessarily general and could not be as precise and exact as the report of a surveyor, except where natural boundaries surrounded the grant, but after the grant had issued they could not be questioned by the granter as vague and indefinite, nor in fact has any instance occurred of any such objection having been made by either the French or British governments, although few original grants are so clear or explicit in
971 their description as that of Sainte Marie. The seigniories in Canada generally were granted upon such descriptions which have come down recognised as such to the present time I am not aware where these official surveys, if they exist, were recorded, but probably they would be found in the office of the crown lands department at Quebec.

To the eighth cross-interrogatory he says: I have looked upon the last paragraph of said William Badgley's reply to the said 17th direct interrogatory, and say that I do not differ from him. Possessors of seigniorial lands by mere occupancy, with or without such grants, are by law seigniorial tenants, called censilaires, holding their lands in the manner stated in said reply. Their occupancy subjects them to the payment of the usual quitrents, whether agreed to be paid or not.

To the ninth cross-interrogatory (as to the municipal law to which the seignory was subjected) he says: I have looked upon that part of his reply to the said last interrogatory relating to this subject, and headed 5th, and have merely to add that I coincide with him in opinion.

To the tenth cross-interrogatory (as to proof of alienation) he says: I have

looked upon the said eight additional cross-interrogatories, and the replies of the said William Badgley thereto, and say that I concur with him in opin-
972 ion. As to the fourth additional cross-interrogatory, and the said reply thereto, as indicated, reading the same as altered in this cross-interrogatory, the said widow of Gaspard did not take any interest in the said shares of her said sons in real estate. As to the fifth additional cross-interrogatory, with the reading as so altered, the laws of Canada prior to the treaty of 1783, in this respect, were the same as the laws of Lower Canada in 1820, and so in like manner the law of Canada in 1783 was the same law in force in 1776 in this respect. The actual possession of the intestate heir was not necessary; the right of possession was sufficient. By the rules of law "le mort saisit le vif," his heir was in the rights of the deceased as himself was.

To the twelfth cross-interrogatory he says: My replies to the direct and cross-interrogatories in this case are the expression of my own opinions, without communication with, or assistance or suggestion, from any one. I have not expressed opinion upon such points, and I have received no compensation, nor promise of any, for my testimony. I first heard of this case in 1861, from the said Honorable William Badgley, who intimated that it was pending at Detroit.

To the thirteenth cross-interrogatory he says: Military service by the feudatory, or those claiming under him, had no existence under the
973 law of Canada, and mere absenteeism in itself would not oust from or deprive the seignior of his right of property, notwithstanding this particular statement mentioned, referred to in this cross-interrogatory.

To the fourteenth cross-interrogatory: As I concur generally with the said William Badgley in all matters of legal opinion and facts connected with the administration of the law and with the general history of Canada as distinguished from the special facts of this case, it is unnecessary for me to review his testimony.

I know nothing further and no other matters that might tend to the benefit of the respondent except what I have stated.

(Signed) J. SMITH.

Sworn and subscribed before me, at Montreal this 10th October, A. D. 1863, a marginal reference on page 12, being first written and subscribed and three words on page 14 having been first erased, and thirty words on page 12 having been first erased.

(Signed) W. RICHIE, *Com'r.*

974 The Honorable Samuel Cornwallis Monk, having first taken the oath mentioned in the foregoing commission, testifies as follows, namely:

To the first direct interrogatory he says: My name is Samuel Cornwallis Monk; my age forty-nine; my residence Montreal; my profession the law; my vocation an assistant judge of the supreme court of Lower Canada, which office I have held for upwards of four years, having formerly practised the law as a barrister of that province for upwards of twenty years, the last four of which I was a queen's counsel of the province. I have been for several years a seignior and owner of seigniorial property in Lower Canada. That court exercises original civil jurisdiction throughout Lower Canada, taking cognisance of and determining in the first instance all civil pleas and causes, as well those in which the crown is concerned as all others, except purely admiralty cases and those within the subordinate jurisdiction of the circuit court. My practice as a barrister and my official duties as a judge have led me to acquire a full knowledge of the ancient and modern

laws and usages of Canada, including the coutume de Paris as it relates to real estate and tenures, and of the modes and manner of their ad-
975 ministration. I read, speak, and write the French language with facility and accuracy and have made a study of the French law of Canada, written and customary. From study and professional practice I have also become acquainted with the principles of the common law of England.

To the second direct interrogatory he says: I have known him for upwards of thirty years. He has recently been appointed assistant judge of the court of queen's bench for Lower Canada, having for upwards of seven years preceding been a judge of the superior court. He was a barrister for upwards of thirty years; he has been attorney general for Lower Canada, and has held other legal and judicial offices. His attainments, in my opinion, are of the highest order; his character and reputation for law learning on these subjects entitle him to rank among the first jurists of Lower Canada.

To the third direct interrogatory he says: I have looked upon the said document now shewn to me and referred to in this interrogatory. I have heard it read and considered its contents; it is annexed to the deposition of Judge Smith.

To the fourth direct interrogatory he says: Having heard, read, and considered the said deposition and answers particularly referred to in this interrogatory and specially to the said fourth division of the fourth to
976 the said seventh, thirteenth, and sixteenth direct interrogatories, and to the last or general direct interrogatory, and to the said several cross and additional cross interrogatories enumerated in this interrogatory and having also read the said two printed papers referred to, namely, the said concession and its ratification, I declare my concurrence with the legal opinions and conclusions expressed by the said Honorable William Badgley in his said answers, and as to his statement therein respecting the history of the said law, its principles, practice and administration in reference to the said special subjects particularly inquired of in this interrogatory. And it is also my opinion that the said fifth article of the said declaration of 1743 did prohibit and render null and void all reunions not pronounced or declared by the governor and intendant or their representatives, as therein mentioned.

To the last or general direct interrogatory he says: I desire to add the following in elucidation of my general concurrence with the Honorable William Badgley and in conformity with the requirements of this interrogatory:

1. As to reunion: In itself it is the fact of the reunion of alienated property to the property from which it had been separated and is the effect of the exercise of a legal right or privilege claimed and demanded either through proceedings at law resulting in a judgment or decree of a
977 competent court or through a legal title of acquisition as purchase, marriage donation, &c. During the French regime in Canada and subject to the feudal law of the coutume, the king as suzerain or dominant seignior was enabled to bring back to the public domain a granted seigniory or fief servant when liable to reunion, but for this it was essential that a judgment or decree of appropriation should be first obtained by which the forfeiture and cancelment of the grant was effected, and which deprived the subordinate seignior of his property. The reunion took effect *eo instanti ipso facto*, or de droit, or de plein droit, as so termed, upon the obtaining of the primary judgment, and the two estates thereby became one property in the hands of the suzerain seignior. No such reunion could take place where the original title remained undisturbed by legal proceedings and judgment. The first arret of 1711, was the first special royal legislation upon the sub-

ject which ordered proceedings to be had at law by the attorney general, and a judgment of reunion thereon to be obtained. The royal declaration of 1743 affirmed the previous arret and enacted a general course of procedure for all the French colonies to which the king subjected himself, namely the obtaining of a decree or judgment of reunion upon legal proceedings instituted by the attorney general.

978 2. As to prescription: Prescription whereby real property is acquired by possession during a legally limited period of years, is considered by the French law of Canada and is also universally treated by all jurists as an alienation and mode of acquisition to be governed by the same law which decides upon the validity of the alienation of real estate, namely, the law which prevails in the place of its *situs;* hence in like manner as for acquisitions of real estate by succession, or by last will and testament, prescription is governed by the municipal law of Canada, the *jus civile*, and is a right which belongs exclusively to subjects and citizens of the country. Mere possession for the legal period is not sufficient to support prescription without the legal capacity or status of the possessor to acquire by prescription. Foreigners cannot therefore have this right, because, although with citizens they enjoy the *communionem* of the *jus gentium* they cannot with citizens have the *communionem* of the *jus civile.*—(See Pothier's treatise of prescription, No. 20.) Prescription is also a real law applicable only where the realty is situated. Jurists concur in this, and unanimously hold that resort must be had not to the law of the domicile of the controvertial parties but to that of the place where the property is situated "*aut statutum dis-*

979 *ponit de prescriptione aut usucapione rerum corporalium sive mobilium sive unmobiliium et hinc inspecitur indistincte locus ubi res est.*"—(See 3 Burge Colonist Laws, p. 122 with his citations; Stockman Deces, 125; Molinaeu's Ad. Cod., lib. 1, tit. 1, p. 557; Bouvier sur la Coutume de Bretagne, c. 35, § 52. Pothier as above is cited Vict. lib. 44, tit. 3, sect. 12. Merlin Reporte de Jurist, verbo Prescription, sec. 1, §. 3, and Pothier same treaties as above, No. 247.) Pothier further observes at No. 250 that as regards seigniories "they are held in law to have no other situation than that of the different properties which make up the dominium of feudal superiority which constitutes the seignory," and this is the French law of Canada. Prescription being by law an alienation cannot operate or run during the minority of the owner of the property to be subjected to it, because during his minority the French law absolutely denied him the power of alienating or of abandoning his property, and has therefore prevented him from losing it either by abandonment or prescription. Both the 113th and the 118th articles of the custom which regulate prescription, expressly restrain the operative effect of this mode of acquisition to persons of age (entre ages,) that is, persons who have attained the legal age of majority. By the common and customary law of Paris, majority was fixed at the age of twenty-five years, which was changed to twenty-one years by the provincial act of 22 Geo. III, c. 1, which itself was not to have effect until

980 the 1st January, 1783; prescription therefore if it had any application, could only begin to run from the said last-mentioned date fixed for the coming of the act into operation. The said 113th and 118th articles have established absolute and essential conditions for its regulation and for giving effect to prescription. The former article requires the possession to be commenced with a just title, and to be continued throughout its limited period of 10 or 20 years with good faith; that is a just title of acquisition or regular conveyance, capable of transferring property, such as sale, legacy, &c., and good faith, that is a continuous belief by the prescriber in good faith that the acquisiton was made from one who he honestly believed was the owner, and had power to dispose of the property; another essential

was that the possession itself during the limited possession should be continuous, open, and uninterrupted, or, in the terms of the article, franchement et sans inquietation. The letter article requires an actual use, occupation, and possession of the entire property for 30 years, continuously, by the prescriber and his predecessors freely, openly, and without any disturbance in the terms of this article, "continuellement tant par liuque par ses predecesseurs franchement publiquement et sans aucune inquietation. If the kings of France or Great Britain could legally
981 set up prescription under the French law of Canada they would necessarily be subjected to the positive requirements of these articles according to the particular prescription claimed. The former had manifestly no right of prescription to urge or exercise against any part of the said seigniory in contest in this case, and the latter could not begin to claim the exercise of this right until after the 1st January 1783, previous to which, by the provisional treaty of peace of 1782, agreed to by the king of Great Britain, the independence of the United States was acknowledged and their several territories freed from the jurisdiction of French Canadian law, and from dependance upon or connection with the territory of Great Britain, the seigniory in contestation passing thereby under the jurisdiction and into the territory of the United States. Moreover, the king of Great Britain as suzerain and dominant seignior by the act of fealty and homage accorded to said De Bonne in February, 1781, had recognized him as proprietor in possession of *of* an undivided moiety of the entire seigniory of Sault Ste Marie, which was in law a recognition of the possession of the entire seigniory enuring to the benefit of his coproprietor, the Chevalier de Repentigny, and it was also without any possessory reservation of or claim either in
982 that entire seigniory or in any part thereof, which could not have been if any such possession by the crown had existed. Prescription does not in any circumstance effectively extend beyond the specific portion or piece of land actually in possession of the prescriber, it being a principle of law that the occupant is not deemed to be in possession of more than his occupation covers; so also in the case of absolute abandonment of real property there must be actual occupation for the time limited to give it prescriptive effect. In many of the granted frontier seigniories of Canada posts were established and forts erected by the king for military purposes or for the protection of settlers, and generally in the original deeds of seigniorial concessions, as in that of the seigniory of Sault Ste Marie, an express reservation is made by the king of his right to take so much of the granted seigniory as should be needed for the erection of such posts, forts, batteries, places d'armes, magazines, and other public places. By no possible construction of the law was this military occupation or possession of a plot of land for the construction of a post or fort an ouster of the grantee from his seigniory; on the contrary, the crown by stipulation in the concession itself is relieved from indemnity to the seignior for the land taken only when it was applied to military purposes; it was in fact a mere servitude, and upon
983 the military occupation ceasing this land reverted to the seignior. Prescription under the said articles of the custom had reference to controversies between individuals, but did notapply in favor of the crown or government in respect to its grants, the established rule of law in this respect being that none can prescribe against his title; in other words, that no party can by prescription set aside his own grant; and hence the crown could not by prescription or adverse possession for any period of time in effect annul its own free grant of the subordinate seigniory. Pothier's Treatise of Prescription and Bourjos's Droit Commune de la France, in 2 vols. fol., are books of authority recognized by the courts of law in Canada.

3d. As to fines on seigniorial mutations: These were changes under the feo-

dal law of the coutume upon the acquisition of seigniorial property either by purchase or succession, and were payable by the acquirer: 1st, upon the purchase of a seigniory or an aliquot part thereof a quint arose, being one fifth of the purchase-money; 2d, upon the successions to such property relief arose, being one year's revenue of the seigniory or a sum of money agreed upon in lieu of it. Relief arose only on acquisitions by collateral successions, never by lineal or direct successions, as from father to child. The 33d
984 art. of the cust, of Paris provides: "Pour icelles mutations de fief que se font par successions ou par donations en ligne directe n'est rein (relief) du." "No relief is due for mutations of fiefs by lineal successions or donations," "No relief or fine of any kind was due by the said Pierre Amable de Bonne either to the French or English governments. The law of the custom for relief applicable in France was never applied and became a dead letter in Canada, no such fines having ever been demanded or enforced here for collateral successions. De Bonne's alienation to Caldwell and Caldwell's conveyance to Noble in 1794 and 1796 respectively, created no seigniorial fines, the property at that time being included in the territory of the United States where it was freed from its original feudal subjection and character, and therefore no such fines, the creatures of French feudal municipal law, could attach to it. This principle is laid down as law by our French jurists. "Vente de fief en tant que fief seule donne droit aux quints ; ces profits cessent lors que les rapports de la feodalite cessent," "The sale of a fief where it is a fief alone gives right to quints; these feudal profits cease so soon as its connection with feodality has ceased."—(See 3d vol. Ferrieres Comm. on the Cust. of Paris, p. 84.) Under like circumstances upon the divi-
985 sion of the province of Quebec by the imperial act of 1791 into the two provinces of Upper Canda and Lower Canada, French grants of the seigniories located in the former division fell within Upper Canada, and lost their feudal character and connection; feudal fines and dues of all descriptions, therefore, ceased, and feudal tenures have never been legally known or recognized there as if they had not existed, inasmuch as the law of England being established in that division of the province recognized the only tenure therein to be that of free and common soccage. In the same way the tenure of lands held in the townships of Lower Canada granted since the cession of 1763 having been granted by the sovereign under English grants of free and common soccage, the French seigniorial tenure and feudal rights have never had legal effect or force, and is altogether unknown as to them; of such are the lands which compose the judicial district of Sherbrooke in this province, in which Messieurs Sanborn and Felton, witnesses named in a commission for their examination in this case, reside and where they have practised the law.

4th. Operation of the 51st article of the customs, its application to the sale by De Bonne to Caldwell: The Chevaliers de Bonne and de Repentigny, under the grant were coprietors *par indivis* in the entire seigniory,
986 each *in tota et inqualibet parte*, and necessarily covassals. By his succession to his father, the said Pierre Amable de Bonne, became also coproprietor, par indivis and covassal. By law either might dispose of his share or moiety, provided the feudal subjection was retained and continued as before the alienation. The prohibition of the article against the sale of more than two thirds of a seigniory without reservation of feudal subjection legally implied merely that the sale or jeu de fief of a greater quantity without such retention would give the dominant seignior right to claim his dues as upon the sale of the entire seigniory, the prohibition was not absolute against the disposal of a whole seigniory or a portion larger than the limited quantity, but only that the disposal of the limited quantity created no dues to the seignior which would ensue if more than the limited

quantity or the entire seigniory were disposed of; the limitation was, therefore, truly in the financial interest of the dominant seignior for the security of his feudal fine, the quint, upon the sale. The article did not so interfere with the sale either of the whole or of the excess, but in such cases feudal dues arose upon the whole, which otherwise would not. By deed of sale the purchaser becomes the covassal in the seigniory in place of the vendor, and the entire seigniory continues subject to the dominant seignior as be-
987 fore the alienation; this is merely the jeu de fief avec profit, not the demembrement of the article. "Le proprietaire du fief en vend une partie cette division de domaine est sans influence sur le titre, l'acquerent tient sa portion sous les memes droits et devoirs que le surplus du fief il le reparte au meme dominant sous la meme foi, sous le meme titre et comme partie integrante du fief dont elle est detache," "The owner of a fief sells a part of it; this division does not affect the title; the purchaser holds his percel subject to the same rights and duties as the remainder of the fief, acknowleding the same dominant seignior, under the same fealty and title, and as an integral part of the fief from which it was detached."—(See 1 Guyot Traite des Fiefs, pp. 121-2, and seq.) The prohibited demembrement of a fief is its conversion into several different fiefs independent of each other, self-subsisting, *per se*. The jeu de fief continues the one fief only. The former multiplies vassals, the latter retains the same vassalage as before the alienations; the former establishes several tenures susceptible of having different conditions, whilst the part *joue* continues to be subject to the same original feudal dues and duties; in fine, the demembrement attacks
988 the title of investiture, whilst the jeu de fief does not interfere with the primitive law. Had the property remained in Canada subject to her French feudal system of laws, the sale by De Bonne to Caldwell would nevertheless have been quite legal, as well as that from Caldwell to Noble, such sales having constantly been made, and a large amount of quints received therefor by the crown. The arret of 1732 did not affect De Bonne's sale of his part of the seigniory. This arret did not intend or apply to such a sale, but was made to compel seigniors to sub-grant their seigniorial lands under the usual quitrents, and to prevent them from selling plots or parcels for money paid. Under the law of Canada it has been held in the last resort by the court of appeals that a notarial title, made in legal form, with the stipulation of the dessaisine and of the transfer of the titles, is a complete deed of conveyance, carrying with it both the right of property and of possession, the seizin of the English and the tradition of the French law, and applies to conveyances of wild lands which are held to operate complete title without livery of seisin or tradition.—(See 3 Lower Canada Reports, Stuart *vs.* Robinsin, p. 310.) This is also in agreement with the decisions of the Supreme Court of the United States, which holds, upon reasonings in conformity with our laws, that conveyances of wild lands
989 operate complete title without livery of seizin.—(8 Cranch Reports, page 219, Green *vs.* Litel et al.) So by the law of England prevailing in Upper Canada equity will supply livery of seisin when sufficient consideration is shown; (Comyer's Digest, "Feoffment," B. 4; Cruise's Digest, 2 Finch Rep. 28, Petersdorff abr. voce "Livery," pp. 345-6;) and finally with title seisin gives possession coextensive with the title, but without it title is confined to metes and bounds, (5 vol. Upper Canada, 2 B. Reports, pp. 136-7, per Ch. J. Robinson, Serg. and Rawle, 100, 1 Pennsylvania, Rep. 458.)

Boundaries under the grant: The courts of justice in Lower Canada are frequently and necessarily called upon to settle questions and actions of bornage or boundary of real estate, and to determine upon and give effect to the construction and extent of the terms of original grants from the French crown of seigniorial property. I have carefully examined the language of

the concession of 1750, and of the said letters patent of ratification of 1751, as well as the map of the said seigniory of Sault Ste Marie, drawn by Franquet, shown to me, of which a copy is hereto annexed. The grant is in express terms of a certain known locality, the Sault Ste Marie, where a then long known and established portage existed. To this specific locality was added a quantity of land contained within certain specified extents, namely,
990 "six leagues in front upon the portage, by a depth of six leagues bordering the River St. Mary joining the two lakes." It is a principal of law in the matter of bornage—1st, that given extensions along sinuous or water lines are always measured by straight lines, leaving open the calculation of compensation to be taken or given for the sinuosities; otherwise the given extent could not be obtained; and 2d, that when natural boundaries are expressed in the grant, they are to be adopted in construction. The grant concedes "le dit Sault Ste Marie." Referring to the previously expressed "endroit nomme le Sault Ste Marie," the ratification uses "du lieu nomme le Sault Ste Maria," a known place or locality about which there could be no dispute or misapprehension; to this "endroit le dit Sault Ste Marie," is added "avec six lieues de front," having reference to "six lieues de front le portage," which the ratification expressly adopts as follows, namely: "six lieues de front sur le portage." The use of the word "sur" is exceedingly common in French grants and "alignements" or boundaries of property, and is not restrictive to a point; it is only indicative of a direction, as along a river, a highway, at length through any space or object measuring lengthwise. The portage in itself was a small extent, and could not furnish the length granted; but being a known locality, it was assumed in the grant and taken as the indication where the front line of the grant should
991 be drawn, and therefore the extent of six leagues "de front sur le portage," along the portage, that is where the portage was situated, was to be measured as the front or north side line of the concession. No doubt could exist upon the construction; but after the words "six lieues de front sur le portage," are added "sur six lieues de profoundeur bordant la riviere qui separe les deux lacs." These terms are employed both in the concession and the ratification; that is, a given depth from a given "front sur le portage," which portage is included in the front side line "sur la profondeur bordant la riviere," which could only be from the portage running in depth southwardly, and necessarily could not include that portage also in the depth or profondeur. The depth line therefore would run from north to south, the portage lying north, and the east side line would by the terms of the grant run in a southern direction, commencing (from the foot of the portage and bordant) bordering the River St. Mary, which separates the two lakes. This line would of course be a straight line from north to south, without account of the sinuosities of the bordering river; and from its apex, its northern point, its front or north side line would be drawn from east to west in a straight line, and necessarily at right angles with the depth line, the sinuosities in this line being also not there accounted for; these lines being estab-
992 lished, the west and south lines follow of course. I have no hesitation in stating that this would be the legal construction given to the grant, and would be the judicial direction or order for settling the boundaries under the terms of the grant. This would, moreover, be in conformity with the Franquet map, which, although necessarily roughly drawn, manifestly indicates that the front and east depth lines were assumed as straight lines not counting the sinuosities on either, because the west and south lines are drawn at right angles to those implied north and east lines, and that the northern and eastern lines were drawn by him from the apex of the angle below the portage. The map itself as an official document taken from the government archives, would claim and receive full consideration and

credit from the courts in this province, and in a contest with the crown would not only remove any possible vagueness or ambiguity which might exist in the terms of the grant, but would also be adopted as a practical exposition and construction put upon the grant by the government itself, and as laying down the boundaries of the seigniory. These lines appear to be in general conformity with the direction of boundary lines to be given by surveyors to Canadian seigniories after 1674, by an "arret de reglement" of that year of the special council of Quebec, which ordered that two
993 lines should be laid down at Quebec, northeast and southwest, and two others southeast and northwest, for the direction of boundary lines of royal concessions thenceforward. This arret or reglement was enforced by the general arret de police of 1676; these directions were made to apply to concessions on the River St. Lawrence, but necessarily yielded to the circumstances of the locallity of the grant and to the express terms of a concession in which a particular boundary is set out, such as the depth line of the Sault Ste Marie concession, to run down the river bordering the two lakes, in which cases the arret yielded; however, it was not absolute for all the country, as by a judgment or arret of the superior council in 1722, upon a contention between adjoining seigniories on the Ottawa or Grand River, another direction was established for the lines of seigniories on that river, namely, that they should run in the same direction as directed by the judgment both for the front and for the depth, namely, for these "courra de l'est quart de sudest a l'ouest quart de nordouest, et pour la profondeur du sud quart de sudouest au nord quart de nordest," (see 2 volume Edit et Ordonnances, pp. 176, 180,) running from east ¼ southeast to west ¼ northwest, and for the depth from south ¼ southwest to the north ¼ northeast. Under all these circumstances, therefore, the lines in the Franquet map appear to have been laid down in general agreement, not only with the express terms
994 of the concession and ratification, but also according to the directions of the arret of 1676, as nearly as the natural configuration of the land itself and the terms of the concession would allow.

(Signed) S. C. MONK.

Sworn and subscribed before me, at Montreal, this tenth day of October, A. D. 1863, two marginal references on pages 4 and 5, having been first written and subscribed.

W. RITCHIE, *Com'r.*

To the first cross-interrogatory he says: In my answers to the first direct interrogatory I have repliel to the several inquiries propounded in this cross-interrogatory.

To the second cross-interrogatory he says: I have read the said documents.

To the third cross-interrogatory he says: I have looked upon the said direct and cross-interrogatories, and upon the said replies thereto, respectively, of the said William Badgley, and I concur with him therein, and especially said sections 7 to 11 of his said reply to said cross-interrogatory, as to said 51st article of the coutume. The said article did not apply to the said sale of the seigniory as therein inquired of, nor to such cases as the said
995 sales from De Bonne to Caldwell, and from Caldwell to Noble, as in said petition mentioned.

To the fourth cross-interrogatory he says: I have looked upon the said several direct and cross-interrogatories mentioned in this cross-interrogatory, and upon the said replies of the paid William Badgley thereto respectively, and also upon the said enumerated sections of his said reply to the said twelfth direct interrogatory, and I state that I agree with him therein; but I would add to the latter part of his answer to the 14th cross-interrogatory,

that relief was due under the custom only on acquisitions by collateral successions, but that it had never been enforced in Canada, and the law had ceased to have effect. I have nothing further to add to what is contained in his said replies. No fines accrued and no interest was due; interest would only become due for non-payment of fines due upon an action at law for the recovery from the seigniorial acquirer.

To the fifth cross-interrogatory: I have looked upon the said 12th direct and cross-interrogatories, and upon the said reply to each respectively, and also upon the said sections §§ §§ 1 to 14 of said reply to the said 13th direct interrogatory, and upon said section 1 of his said reply to the said 13th cross-interrogatory; I do not differ from him in his said replies; the words "de la mettre en valeur" of the ratification and not in the concession are
996 merely synonymous with the words "de deserter et faire deserter la dite terre," of the concession and not in the ratification. The particular words cited with reference to the act of fealty and homage, are not suspensive of the benefit of the act, because the duty was actually performed by the seignior in form, and accepted by the governor without objection. The selected words cited are a mutilation of the governor's entire direction in this respect, which was simply for the exhibition of the ratification of the concession, to show the fact of its having been issued by the king.

To the sixth cross-interrogatory he says: I have looked upon the said 13th direct and cross-interrogatories, and the said replies of said William Badgley to each respectively, and especially by division I, as to the said reply to the said 13 direct interrogatory. I fully agree with him, §§ §§ 15 to 18, that no real difference exists in the said words of the said grant, and of the said confirmation, and that no such legal distinction exists as that inquired of in his portion of said cross-interrogatory. Under any circumstances of fact, whether those assumed in this cross-interrogatory or others, a judgment was indispensable to the title of the crown or government. Letters patent do not become void ipso facto; and whilst entire and unimpugned, the crown could not *ex mero motu* arbitrarily set them aside and make title to itself
997 against them. The grant was conditional upon the performance of facts to be ascertained by evidence, and which could not be done without notice and legal proceedings against the grantee. I know nothing of the reality of the facts stated under paragraphs 1st, 2d, 3d, 4th, and assume that they are hypothetical.

As to the 1st: Their importance and weight would be solely in the consideration and judgment alone of the tribunal specially appointed to decide upon them, the French governor general and intendant jointly.

As to the 2nd: The reception in fealty in February, 1781, concluded the crown against the assumption of abandonment, which, moreover, could not be during the minority of De Bonne up to 1783, whilst the stipulations of the treaty of 1794 estopped both governments and protected owners in their right to their property which had passed to and become portion of the United States territory.

As to the 3d: Foreign allegiance or military service, notwithstanding the assumed alleged remonstrance of the governor, did not of themselves debar an alien from legally holding his acquired property situated in Canada.

And as to the 4th: Adverse possession as known to English law could not exist in Canada by the British government, if synonymous with and in the nature of said prescription to acquire; that has been explained
998 already. I will not undertake to say anything of such possession by the United States. If it existed, I presume the lands would belong to some State of the Union. The British government held no such possession; as to that of the United States government I am not informed, and know nothing.

As to the portion marked 2dly: I repeat that such judgment was absolutely indispensable to the title of the crown under the said *arret* and circumstances stated, and such lands could not be held in law, or become reunited *de facto* under the arret of 1732, without such judgment.

As to the said portion marked 3dly: Such lands inquired of affected by the said § 3 of the arret of 1732, there is no question that they did not stand so reunited *de facto* without such special judgment under any circumstances, of fact. The full force of the said words inquired of is simply that such lands would be so reunited after legal proceedings had for the purpose, and thereon a judgment rendered.

As to the said portion marked 4thly: The arret of 1743 was a general law governing reunions generally and regulating the mode and manner of proceeding to be observed therefor. These provisions could not be departed from.

As to the division marked II of this cross-interrogatory: I have
999 looked upon the same, and upon the said sections, § 1 to 11 of reply, to the last or general interrogatory.

As to the portion of this division marked 1stly, as to lands being in a position of meriting reunion. That position was, of course, matter of fact to be ascertained in a legal manner by the competent tribunal having jurisdiction to adjudicate upon it; the terms meriting reunion are merely legal expletives indicating the liability of a grant to reunion under a certain proved condition of things; the entry of one co-grantee enured to the benefit of the other, and upon a part for the whole was an entry upon the whole grant. The British crown did not enter, but, on the contrary, admitted De Bonne's possession in February, 1781, of the undivided moiety of the whole seigniory as proprietor and co-possessor with De Repentigny, which was a legal possession of the whole, as before stated, without claiming or alleging any co-possession by itself. The crown of Great Britian has not made any such grant. It had estopped itself absolutely and effectually under its agreement by the treaty of 1764 from interfering with De Bonne's power and right to sell and dispose of his previously held and acquired property as he thought proper. The said conditions of the grant inquired of appear to have been sufficiently complied with. I belive that the *reunion* of the French law is not known to, and forms no part of, the laws of Michigan.

1000 As to the said portion marked 2ndly, as to Canadian precedents: I do not know nor have I heard of any such case, nor do I believe that any such has occurred in Canada.

As to the portion of this division marked 3dly, as to Canadian rules of equity: There are no such rules of equity synonymous with the English and American law or rules of equity. I repeat that no such reunion could be had without such previous judgment, the remainder of this portion is not in such form as to enable me to answer it.

As to the said portion marked 4thly, as to the will of the crown being the essence of the operating power whereby reunions were effected: I have looked upon the part of the 13th cross-interrogatory relating to this subject, and upon the said arrets, and the said judgment of 10th May, 1741, and the reply of said William Badgley to the said cross-interrogatory (§§ §§ 13 to 19) relating thereto, and I have looked to the public documents connected with the said company of New France in 1663, and of the West Indian Company in 1674, and of the province of Acadia in 1703. Both of those companies made surrenders of their grants, which were accepted by the crown, and the shareholders of the latter company obtained an indemnity of 3,500,000 francs in consequence of their surrender. Upon these surrenders the crown took possession. The reunion of Acadia was upon the judgment
1001 of the council of state acting judicially upon conflicting claims thereto.

From the date of the arret of 1711, which constituted a judicial tribunal to adjudicate upon reunions according to law, followed by the subsequent enactments of 1732 and 1743, whose provisions have not been interfered with, the only operation of the will of the crown has been to order the adoption of legal proceedings against negligent seigniors; no doubt restitution and imdemnity would follow legal informality in the exercise of prerogative, but I am not aware of such a case.

As to the portion of this division numbered 3dly, as to prescription the 113th and 118th article of the *coutume de Paris*: I have looked upon the said part headed 7thly (§§ 74 to 89) of said William Badgley's reply to said last or general interrogatory relating to this subject and the reply thereto (§§§§ 23 to 29.) The said reply and my answers upon this subject to the last or general interrogatory explain fully the effect of these articles, and could not be made in 1783 to protect a title in the superior domain, which title did not then exist.

As to the portion of this division marked 6thly, as to legislative changes between 1763 and 1783: After the proclamation of 1763, which required the laws to be administered in the colony as near as might be conforma-
1002 bly with the law of England, the first change was by the Quebec act of 1774, which protected all Canadian subjects in their possessions and property, with their customs and usages, and restored the French law for the decision of controversies relative to property and civil rights. This act had no reference to imperial and governmental or administrative rights and attributes. This act was followed by the provisional treaty of peace of 1782, which put an end to the war, and recognized the independence of the United States and of their territories; the public domain on the right thereof did not exist as to the seigniory in question in this case previously to the treaty of 1783. The right of the crown of Great Britain to a reunion did not exist in the locality in question during the period inquired of. As to the existence of the said tribunal inquired of raised in the said 22d question proposed to the judges, the point was not settled, as they were equally divided in opinion upon it; the question in itself had no connection with the subject-matter submitted to the judges. It is a fact that in reply to said question 21 it was considered by a considerable majority of the twelve judges that the said arrets of 1711 and 1732 were in force in 1854. This last-mentioned question was one of a series from the 16th, inclusive, to the 23rd, having relation to the tenure of sub-grants in seigniories to tenants which the ancient laws, the arrets of 1711 and 1732, required to be at a quitrent, and not to
1003 be by sales for money. It was this legal effect of those arrets that was inquired of in those questions, and whether for such purpose they were in existence in 1854, when the act for the abolition of the seigniorial tenure was passed, but the questions had no application to the titles of seigniories, or the power of the governor and intendant to interfere with them. The arret of 1732 applied to wild lands on the seigniories which were being sold instead of being sub-conceded to settlers at a quitrent, but did not apply to the sale of a seigniory or a quotity thereof; and it is also a fact that in reply to the said 23d question to the said judges they all concurred in opinion that the judiciary powers of the intendant had devolved upon the ordinary civil tribunals of the country; but it must be here observed that the judicial powers of the intendant, individually, were the ordinary judicial powers over civil controversies, including the enforcement of sub-contracts entered into between the seigniors and their censitaires for the improvement of the sub-grants, and the cancelment of those contracts in case of non-performance of the contracts by the censitaires, but it did not extend to proceedings by the attorney general at the suit of the crown against negligent seigniors which were intrusted to the governor and intendant jointly, under the arret of 1711 and the declaration of 1743.

1004 As to the portion of this division numbered 7thly, as to alienage and escheat, &c.: I have looked upon the said reply of said William Badgley to the said last direct interrogatory under the said heads, 2ly, 3ly, 4ly, of said reply; also upon the part of said 13th cross-interrogatory relating to this subject and his said reply thereto; also on said 4th article of the treaty of 1763, and say that I do not differ with him as regards said De Bonne and said Chevalier de Repentigny. Their rights were not affected thereby at the time inquired of. The law cited from Blackstone was not at any time the law of the province of Quebec up to its division into two sections by the act of 1791, nor since that time of the provinces of Lower Canada. De Repentigny's effectual remedy was the writ of right. Had the crown entered, the title of the crown would be bad and wrongful, not from mere informailties, but absolutely under the laws of Canada.

8ly. As to section 1 of this division a judgment or record could not be dispensed with, the respondents, the United States government, could not claim any possible title previous to the treaty of 1783, nor since, except under general enactments of Congress of which I am ignorant.

As to section 2: The matters inquired of were essential in law, and not mere matters of form.

1005 As to section 3: The absence of either inquired of, these being matters of record, could be cured or rendered presumeable by such said lapse of time or by said other circumstances of the case.

As to section 4: It is not possible; the records and registers of the tribunals are complete, and if such judgment or proceeding had existed it would be found without difficulty.

To the seventh cross-interrogatory he says: I have looked upon the said 16th direct and cross-interrogatories, and upon the said several replies referred to. I can say nothing and know nothing personally respecting the said maps, either as to how or why they were drawn, except that as official maps in the possession of the government for whom they were prepared they would be quite effective against the government as to the locality of the grants, and as to the general correctness of the lines laid down in them. In the grant of the Ste Marie seigniory, the word portage is evidently used to indicate simply the grant as being to the north where it was situated, and points out the north side line. The grant also gave a natural lateral boundary in depth, which indicates the easterly side line of the grant. In grants on rivers or irregular configuration of boundaries, a straight line is drawn across the front or in the depth without regard to the sinuosities of the stream or land, and compen-

1006 sation is given aliunde. The Franquet map precisely and clearly explains the intention of the government as conveyed in the terms of its grant. As the correctness of the map does not seem to have been questioned, it would be judicially sustained here if this grant were in controversy. No real uncertainty appears to exist, and the point of departure can be readily ascertained. The west and south boundaries would follow the establishment of the east and north lines. I know nothing of the said memoirs, nor of their contents. The ancient practice of the French crown was to make the grant upon the description of the parcels or calls furnished by the applicant. The boundaries afterwards became defined by survey, either specially by the government surveyors or by those selected by the applicants. The original descriptions were necessarily general, and could not be as precise and exact as the report of a surveyor, except where natural boundaries surrounded the grant, but after the grant had issued they could not be questioned by the grantor as vague and indefinite, nor in fact has any instance occurred of any such objection having been made by either the French or British governments, although few original grants are so clear or

explicit in their descriptions as that of Sainte Marie. The seigniories
1007 in Canada generally were granted upon such descriptions, which have come down recognized as such to the present time. I am not aware where those official surveys, if they exist, were recorded, but probably they would be found in the office of the crown lands department at Quebec.

To the eighth cross-interrogatory he says: I have looked upon the last paragraph of said William Badgley's reply to the said 17th direct interrogatory, and say that I do not differ from him. Possessors of seigniorial lands by mere occupancy, with or without such grants, are by law seigniorial tenants called censetaires holding their lands in the manner stated in said reply. Their occupancy subjects them to the payment of the usual quitrents, whether agreed to be paid or not.

To the ninth cross-interrogatory, (as to the municipal law to which the seigniory was subjected,) he says: I have looked upon that part of his reply to the said last interrogatory relating to this subject, and headed 5ly, and I have merely to add that I coincide with him in opinion.

To the tenth cross-interrogatory, (as to proof of alienations,) he says: I have looked upon the said eighth additional cross-interrogatories, and the replies of the said William Badgley thereto, and say that I concur with
1008 him in opinion. As to the fourth additional cross-interrogatory, and the said reply thereto as indicated, reading the same as altered in this cross-interrogatory, the said widow of Gaspard did not take any interest in the said shares of her said sons in real estate. As to the fifth additional cross-interrogatory with the reading as so altered, the laws of Canada prior to the treaty of 1783 in this respect were the same as the laws of Lower Canada in 1820, and so in like manner the law of Canada in 1783 was the same law in force in 1776 in this respect. The actual possession of the intestate heir was not necessary. The right of possession was sufficient, and by the rules of law le mort saisit le vif, his heir was in the rights of the deceased as himself was.

To the twelfth cross-interrogatory he says: My replies to the direct and cross-interrogatories in this case are the expression of my opinions without communications with or assistance or suggestion from any one. I have not expressed opinion upon such points, and I have received no compensation nor promise of any for my testimony. I first heard of the case in 1861 from the said Honorable William Badgley, who intimated that it was pending at Detroit.

To the thirteenth cross-interrogatory he says: Military service by
1009 the feudatory or those claiming under him had no existence under the law of Canada, and mere absenteeism in itself would not oust from or deprive the seignior of his right of property notwithstanding this particular statement mentioned referred to in this cross-interrogatary.

To the fourteenth cross-interrogatory: As I concur generally with the said William Badgley in all matters of legal opinion and facts connected with the administration of the law and with the general history of Canada as distinguished from the special facts of this case, it is unnecessary for me to review his testimony. I know nothing further, and no other matters that might tend to the benefit of the respondent except what I have stated.

(Signed) S. C. MONK.

Sworn and subscribed before me, at Montreal, this 10th day of October, A. D. 1863, a marginal reference in page 11 being first written and subscribed, thirty words on page 11 and three words on page 14 having been first erased.

(Signed) W. H. RITCHIE, *Com.*

I hereby certify that the foregoing depositions were written down
1010 by Louis Arthur Des Rosiers, in my presence and that of the respective witnesses; that they were signed in my presence, and that before proceeding to testify, each witness took the oath mentioned in the commission hereto attached.

W. H. RITCHIE, *Com.*

1st Exhibit, Franquet's map. Original extract from French archives. See list sent forward to Washington for use of the U. S. Supreme Court, under rule No. 8 [3,] being the same referred to as Morin's Exhibit AA in Montreal depositions, (No. 1.)

2nd Exhibit, replies of Hon. Wm. Badgley to interrogatories, &c., in this case. See same Montreal depositions, (No. 1.)

1013 SHERBROOKE DEPOSITIONS.—Filed 17th October, 1863.

Direct interrogatories on the part of the respondents.

First interrogatory. What is your name, age, your residence, and vocation? and, if you answer that you are a lawyer, state how long and where you have practised the law, and whether you are a person learned in the French laws and usages of Canada, and what have been your opportunities to become acquainted with such French laws and usages, especially
1014 with the coutume de Paris, so far as it relates to real estate and tenures from the crown.

Mr. Sanborne and Mr. Felton, please to state your opinion of the professional status, character, and attainments of the said Judge Meredith and of the Honorable Lewis T. Drummond, especially as regards questions connected with the real estate held by the coutume de Paris and the rights of the crown in Canada to real estate reverting under the said coutume, or by escheat, or otherwise.

Second interrogatory. Have you read, if not, please now to read, certain documents purporting to be copies of, 1st, the amended petition in this matter; 2nd, the respondents' answer thereto; 3rd, interrogatories, cross-interrogatories, and additional cross-interrogatories exhibited to the Honorable William Badgley and certain other witnesses, at Montreal, under the commission in this matter dated the 11th September, 1862, and also the replies of said William Badgley and the witnesses Morin and Bouchette thereto?

Third interrogatory, as to violation of 51st article of the coutume: Look upon the 7th of said direct interrogatories and the 7th cross-interrogatory and the replies of the said William Badgley thereto, respectively, and state whether, and in what, you differ with the said William Badgley
1015 therein, and especially §§ 7 to 11 of his reply to said cross-interrogatory. As to the 51st article of the said coutume, did or did not the said article apply to the sale of the entire of a seigniory as being more than two thirds thereof, and did it or not apply to such cases as the sales from De Bonne to Caldwell and from Caldwell to Noble, as in said petition mentioned? State your views fully as to the arrets of 1711, 1732, and 1743, (§§ 12 to 21 of reply to said cross-interrogatory.) Defer replying on these subjects until replying to the 6th interrogatory, hereinafter written.

Fourth interrogatory, as to fines: Look upon the 8th and 14th direct interrogatories, and the 8th, 10th, (said 10th being in said William Badgley's reply referred to as the 9th,) and 14th cross-interrogatories, and the replies of the said William Badgley to each respectively, and also upon §§ 8, 9, 10, 11, 12, and 13 of his reply to the 12th direct interrogatory. State whether and in what you differ with the said William Badgley thereon, and especially whether any other, and if so what, fines besides quints accrued to the superior domain on the state of facts mentioned in the said amended petition and

including quints. State the amount now due in all for principal and
1016 interest, assuming that nothing was ever paid on account thereof, and that the petitioners' claim were now admitted, subject to the payment thereof.

Fifth interrogatory, as to homage: Look upon the 12th direct interrogatory, the 12th cross-interrogatory, and the reply of thesaid William Badgley to each respectively, and also upon §§ 1 to 14 of his reply to the 13th direct interrogatory, and § 1 of his reply to the 13th cross-interrogatory. State whether, and in what, you differ from the said William Badgley as to said replies, and herein have regard to the fact that the words "de la mettre en valeur," contained in the confirmation of 1751, are not contained in the provincial grant of 1750; and especially do you or not consider the words "nous suspendons la dite foi et hommage" to mean a suspension of the benefit of said act of fealty and homage?

Sixth interrogatory, as to a judgment being an indispensable prerequisite to reunion: Look upon the 13th direct interrogatory, the 13th cross-interrogatory, and the replies of the said William Badgley to each respectively, and especially—

I. As to his reply to the 13th direct interrogatory, 1stly, do you
1017 agree (§ 15 to 18) that no real difference exists between the words of the provisional grant (of 1750) and of the confirmation, (of 1751,) that is to say, between the words "the concession shall be and remain null" and the words "it shall be reunited to the domain?" Is there or not the legal distinction which exists between acts void and acts voidable? and if not so, and the grant is to be considered null and void, would or would not a jugement be absolutely indispensable to the title of the crown after, 1st, a few feeble and abortive attempts to fulfil, amounting in fact to an almost total neglect of the conditions subsequent, such as stated hereafter at the commencement of part II in this interrogatory, followed by, 2d, abandonment of the fief and absenteeism for a century; 3rd, repudiation of obligation to domestic military service and perseverance in foreign allegiance and foreign military service in spite of the direct written remonstrances of the governor general for the time being; 4th, adverse possession of the abandoned and derelict lands in question (however informally such possession may have been acquired) by the British government and the United States, with
1018 acquiescence by the grantees and their representatives for so long a period?

2ndly. Do you agree (§§ 19 to 26) that as to lands becoming liable to reunion for neglect of improvements under § 2 of the arret of 1732 ("si non et le dit temps posse les dites terres demeureront reunies au domaine de sa majeste en vertu du present arret et sans qu'il soit besoin d'autre") a jugement was absolutely indispensable to the title of the crown under the circumstances 1st, 2nd, 3rd, and 4th above stated? and is there no question whether they might not be held, in law, when the time limited should be passed, to stand *de facto* reunited to said domain by the mere operation in law of the said arret of 1732 or otherwise, and without a special jugement under the arrets of 1711 or 1743? Give the full force of the words "et le dit temps passe demeureront." Do they or not appear to you to contemplate any interval of time whatever between the expiration of the period limited and the commencement of the period of actual and full reunion, and do they or not appear to you to preclude the supposition of intermediate legal proceedings being necessary.

3rdly. As to lands becoming liable to reunion under § 3 of the arret of 1732 for attempting to sell them while still covered with wood ("les quelles seront pareillement reunies de plein droit au domaine de sa majeste et seront au surplus les deux arrets de 1711 executes, &c.:") Is there no question

whether such lands might not be held in law to stand *de facto* reunited to said domain by the mere operation in law on breach of the said arret and without a special jugement under the arrets of 1711 and 1743 or otherwise, the circumstances being as above 1st, 2nd, 3rd, and 4th stated? Give the full force of the words "de plein droit."

4thly. As to § 5 of the arret of 1743, ("declarons nulles toutes reunions qui neseront pas prononces:") Is or is not the scope of the declaration to be considered as limited to reunions capable of being pronounced; that is to say, to jugements or judicial decrees of reunion as distinguished from reunions by operation of law, viz: by the arret of 1732, § 2, or "de plein droit."

II. As to his reply to the 13th cross-interrogatory: Look upon the same and upon §§ 1 to 11 to the last or general direct interrogatory—

1stly, as to lands being in the position of meritory reunion: Assuming the state of facts to be merely that one moiety of said lands had been entered upon by De Repentigny in 1751, and that for four years afterwards some 3 or 4 acres thereof were cultivated and some 6 or 8 head of cattle purchased and kept thereon, but the whole abandoned by him and all claiming under him in 1755, and ever since, and the other moiety never entered on by De Bonne or his representatives at all, and that nothing further was ever attempted towards performing the conditions subsequent; assuming that the crown entered into possession without a formal jugement some time between 1763 and 1783, and had since granted about one half thereof (108,000 acres) to *bona fide* settlers; and assuming that the laws in force in that particular locality at the time of the United States treaty of 1783, and none others, govern the case, are you or not of opinion that the conditions of the grant and confirmation of 1750 and 1751 were sufficiently complied with, and were or were not the said lands between 1755 and the present time in at least the position of meriting reunion, (dans les cas d'etre reunies?) See reply to § 7 and also to § 10 (commencement) of 13th cross-interrogatory.

2ndly, as to Canadian precedents: Are you or not aware of or do you believe that there has been any case in the Canadas in which the British crown or the Canadian government has taken possession of abandoned or other seigneurial lands meriting reunion (dans le cas d'etre reunies) without first obtaining a formal jugement?

3rdly, as to Canadian rules of equity: Supposing such a case to exist and the facts to be as firstly above assumed, is it or not your opinion that a reunion could not be effected without a formal jugements under the arrets of 1711 or 1743? And if you are of opinion that for want of such formal jugement alone, impossible as it may have been from political changes to obtain it, the title of the British crown would now be considered under the coutume de Paris bad and its possession wrongful against grantees claiming restitution from the crown in a Canadian court of equity by virtue of a tenure such as that alleged under the coutume de Paris supposing such competent court of equity to exist specially empowered to adjudicate?

4thly, as to the will of the crown being the essence of the operative power whereby reunions were effected: Look upon that part of the 13th cross-interrogatory relating to this subject, and upon the arrets and the jugement of the 10th May, 1741, therein referred to, and the reply (to said cross-interrogatory) of the said Badgley (§§ 13 to 19) relating thereto; also upon the act of reunion contained in the acceptance of the surrender of the company of New France, and dated March, 1663, (Edits T. 32,) and the act of reunion contained in the edict suppressing the West India Company, and dated December, 1674, (Edits T. 78,) as well as the arret of 20th March, 1703, reuniting the entire province of Acadia, and state your own views as to the practically paramount effectiveness of the will of the crown in such matters under French rule, and the constitutional or other checks,

if any, which were effective to control the will of the crown and to obtain restitution in case of legal informality in the exercise of the will of
1022 the crown by taking possession of an abandoned seigneury under such circumstances as firstly above assumed without previously obtaining a formal jugement.

5thly, as to prescription under the 113th and 118th articles of the coutume de Paris: Look upon that part headed 7thly (§§ 74 to 89) of the said William Badgley's reply to the last or general interrogatory; also upon that part of the 13th cross-interrogatory relating to this subject, and the reply thereto (§§ 23 to 29.) State your own views fully as to the extent to which the said 113th and 118th articles of the coutume would now, under such circumstances as first'y above assumed, be available to protect the title of the superior domain, assuming the laws which applied to the subject in that particular locality in 1783, and none others, to be applicable to such a case.

6thly, as to legislative changes between 1763 and 1783: Are you aware of any, and if so, of what, political changes, or imperial or provincial legislation, prior to the United States treaty of 1783, which alters from the position in which they stood prior to 1763, and under French rule, the abstract rights of the public domain as against its own grantees of seigniories, held under the tenure of the coutume de Paris, expressed in the said grant and confirmation (1750 and 1751,) and herein have regard among others
1023 to the 8th and 9th section of the act 14 Geo. III., commonly called the Quebec act, and state how far any such changes are in your opinion applicable to the present case under the circumstances firstly above assumed; see also section 1 to 10 of said William Badgley's reply to said 13th cross-interrogatory and section 21 of his reply to the 7th cross-interrogatory, and state whether or not it is the case (end of § 10) that the right of the crown to a reunion in in such cases as the present (such right being considered in an abstract sense and as distinguished from the tribunals for enforcing the right,) existed in the locality in question under the British government from 1763 to 1783, and is, or not, the point as to the existence of a tribunal for exercising the powers relating to the concession of seigneurial lands conferred on the governor and intendant by arret of 1711, and raised by the 22d question administered to the judges sitting at Quebec, on the 4th of September, 1855, under the 18 Vict., c. 3, (provincial,) generally considered a moot and unsettled point in Canadian law? and is it, or not, the fact that out of the twelve judges sitting six judges replied in the negative and six in the affirmative thereto? and is it, or not, the fact that in reply to question 21 it was answered by some, and if so, by how many, of the 12 judges that the said arrets of 1711 and 1732 were in force at the time of passing the seigniorial act of 1854? and is it, or not, the fact that in
1024 reply to question 23 it was answered unanimously that all the judiciary powers exercised by the intendant in civil matters before the cession of the country had devolved upon the ordinary civil tribunals of the province?

7thly, as to alienage and escheat by general laws of Canada apart from the laws of the coutume de Paris: Look upon the reply of said William Badgley to the last or general direct interrogatory, under the heads 2ndly, 3rdly and 4thly, (§§ 12 to 50 of said reply;) also upon that part of the said 13th cross-interrogatory relating to this subject, at the end of said cross-interrogatory, and the reply of the said William Badgley thereto (section 30 of said reply,) also on the 4th article of the treaty of 1763 therein referred to, and state whether and in what you differ therewith as regards De Bonne, and as to the Chevalier de Repentigny, who, notwithstanding the governor general's express personal remonstrances in writing, persevered

in foreign allegiance and foreign military service until his death, in 1786, and did not sell his estate to a British subject within the period of 18 months mentioned in the treaty. How were his rights as against the British crown to said previously abandoned seigneury affected thereby at the time of the United States treaty of 1783, as regards his right to hold the same as well as regards his right to transmit the same by descent? Was the
1025 common law of England in force in Canada at any time between 1763 and 1783? Was it, or not, the law of Canada at any time between those dates that, as stated in Blackstone's Commentaries, II, 245, in cases of escheat, the lord might either actually enter or bring his writ of escheat; and assuming that the crown did, under the circumstances firstly above stated, actually enter in or about 1765 without writ of escheat or office found, what effectual remedy had the said De Repentigny against the crown, he continuing an alien and absentee? and in your opinion would, or would not, the title of the crown so acquired be considered, under the circumstances 1stly above assumed, under the general Canadian law in force previous to 1783, and on grounds wholly distinct from the coutume de Paris, bad in equity, and its possession wrongful merely for want of the usual formalities prior to entry for escheat?

8thly, generally as regards the subjects enquired after in this 6th interrogatory: assuming the state of facts, firstly in part II of this 6th interrogatory assumed, state your opinion—

1. Whether under the coutume the existence of a judgment, or under the general laws of Canada previous to 1783 a record of office found are, respectively, under the circumstances absolutely essential to the title
1026 of the respondents in equity?

2. How far such jugement or record of office found respectively are to be considered a mere matter of form?

3. To what extent the absence of such jugement or record of office found, assuming that there is now none to be found, may be respectively considered as having been cured, or their existence now presumable from possession for such a lapse of time, and other circumstances of the case.

4. Whether or not, from your knowledge of the practice of the law in ancient times and of the archives of Canada, it is possible that such jugement may have been pronounced, or such office found, or some equivalent proceeding taken and perfected, without any proper record thereof having ever existed, or at least without the record thereof being now forthcoming from or even existing in the proper office, and herein have regard to sections 3 to 6 of said William Badgley's reply to the 13th cross-interrogatory.

Seventh interrogatory, as to Franquet's map: Look upon the 16th interrogatory, the 16th cross-interrogatory, and the replies of Pierre Louis Morin, Joseph Bouchette, and of the said William Badgley to each respectively.

What can you say from your knowledge of Canadian topography,
1027 history, and record, or otherwise, concerning the accuracy of the maps of Canadian seigneuries made by Franquet, and do you believe that he surveyed, or caused to be surveyed, the seigneuries in each case by actual measurement, or in any other, and what, special manner as regards each seigneury, or do you, on the contrary, believe that for mere military purposes connected with the general defence of the frontier he laid the boundaries down roughly and by guess, with a view rather to shew the general location of the seigneury than accurately to define its boundaries, and what other than the words of the grant thereof do you believe to have been his authority for the location of the boundary lines of seigneuries in the maps which bear his name, and especially in the present instance, where the description of the boundaries in the grant and confirmation of 1750 and 1751 is uncertain by reason of its not specifying the point at which the "frontage"

therein referred to begins or ends, especially what do you suppose to have been his authority for the location of the west and south boundary lines? Where are the "descriptive memoirs of the localities," and which are mentioned by said Morin as having accompanied the said map when transmitted to the king of France. State the purport of them as regards the seigneury in question. Why are not the same or a copy thereof produced?

State all you know with regard to these descriptive memoirs. What
1028 was the ancient practice of the French crown in fixing the boundaries of seigneuries? Were or were not the "calls" or descriptions of the parcels usually vague and incapable of definite location in view of their being afterwards defined accurately by an official survey duly returned and recorded, and in what office were such official surveys, if any, recorded, and where should they now exist?

Eighth interrogatory, as to the presumption of sub-tenancy from mere proof of possession: Look upon the last paragraph of said William Badgley's reply to the 17th direct interrogatory, and state whether and in what you differ therewith, and especially are you or not of opinion that according to the coutume de Paris occupants of lands which may have once formed part of an abandoned seigneury are from the fact of occupancy alone to be presumed to be seigniorial sub-tenants or censitaires, and this without proof of payment of rent or any other incident to an inferior tenure; and in this respect was or was not the law of the coutume the same as that of Eng'and, namely, that proof of possession without proof of payment of rent is *prima facie* evidence, and raises the presumption, of an estate corresponding to seizin in fee in the occupant?

1029 Ninth interrogatory, as to the municipal law to which the seigneury was subjected: Look upon that part of the said William Badgley's reply to the last or general direct interrogatory relating to this subject, and headed "fifthly," (§§ 57 to 64,) and state your own opinion thereon.

Tenth interrogatory, as to the proof of the alienation by the said De Bonne to Caldwell: Look upon that part of the said William Badgley's reply to the last or general interrogatory relating to this subject, and headed "sixthly," (§§ 65 to 73,) and state your own opinion thereon.

Eleventh interrogatory. Look upon the eight additional cross-interrogatories and the replies of the said William Badgley thereto, and give your own opinion on the same, respectively and especially. As to the 4th additional cross-interrogatory and the reply thereto, near the end of the said interrogatory, after the words "under the laws of Canada prior to," instead of the date "1820," read "the United States treaty of 1783," and say whether or not you agree that on the facts as therein stated, the widow of Gaspard did not take any interest in the shares of her sons, who died unmarried and childless, particularly in the share of her son Louis, who survived Camille; and as to the 5th additional cross-interrogatory, at the beginning thereof, after the words "under the laws of Canada prior to," instead of the
1030 date "1820," read "the United States treaty of 1783," and near the end thereof, after the words "under said law prior to," instead of the date "1796," read "the United States treaty of 1783," and be particular in replying to the last section of the said 5th additional cross-interrogatory, to which section the said William Badgely has not replied.

Last or general interrogatory. Review the testimony of the said William Badgley generally in all matters of legal opinion and facts connected with the administration of the law, or with the general history of Canada, as distinguished from the special facts in this case to which he deposes, and state your own views. Do you know or can you set forth any other matter or thing which may in anywise tend to the benefit of the said respondents in this cause? If so, set forth the same and all the circumstances and partic-

ulars thereof, according to the best of your knowledge, remembrance, and belief, together with your reasons at large; and having regard to the definition of the word "fief," by Pothier. (Faite des Fiefs, part I, ch. prelim § 1, 3,) state whether or not the feudatory of the fief in question was liable to render military service when thereto called by his feudal superior, and state how the title of feudatories and the heirs of feudatories of the crown of France to seigneurial lands in the locality, and under grants in the form of
1031 those in question would have been in and previous to 1763 affected under the feudal laws then and there in force, by the mere refusal of the feudatory through whom the heirs might claim by descent to render military service, and by his preference of foreign allegiance and foreign military service, followed by absence of the seigneur from the seigneury, and from the realm for so long a period as in the present case, but independently of the other circumstances of the case, *e. g.*, abandonment of the seigneury by tenants, as well as by the seigueur, adverse possession by the crown, and acquiescence of the seigneur.

The foregoing interrogatories are allowed by the consent of the counsel for the petitioners, subject, however, to all objections to them, and to all testimony that each witness may give, on the ground of incompetency or irrelevancy, and said counsel expressly reserves to the petitioners the right to object to any part of said interrogatories or to any answer of a witness, upon the ground that the same is incompetent or irrelevant, upon the final hearing of the case, and the cross-interrogatories of the petitioners to be added are not in anywise to be regarded or treated as a waiver of any such objections.

Detroit, 1 Sept., 1863.

(Signed) J. M. HOWARD, *Sol. for Pet'rs.*
" ALFRED RUSSELL, *Resp't's Sol's.*

1032 *Cross-interrogatories on the part of petitioners.*

First cross-interrogatory. State where, with whom, or in what institution you studied the law. Where have you actually practiced the law as a profession, in what courts and for what length of time? Have you frequently been employed and acted as counsel in controversies, whose decision involved a thorough knowledge of the feudal laws of Canada, relating to the tenure of lands, and in how many such cases have you acted as such counsel in the court of last resort in Canada, and how many in inferior courts? Are you able to speak, read, and write the French language readily and intelligibly?

1033 Second cross-interrogatory. Did you ever hold and exercise any judicial office in Canada which required you to consider and pass upon questions depending upon the interpretation of the feudal laws of Canada, the coutume de Paris, or the several arrets, edits, declarations, and ordonnances of which you have spoken, of date anterior to the conquest of Canada by Great Britain? If yea, what was the office and how long did you hold and exercise it? And is not Hon. William Badgley, of Montreal, reputed and considered in Canada as an eminent and learned jurist, well versed and well instructed in questions of that kind? Do you claim to be more learned and better instructed in them than he? And if so, what particular advantage do you claim to possess over him in this regard?

Third cross-interrogatory. State at what time and at whose request you first read or heard read the documents mentioned in the second direct interrogatory, and whether and at whose request or suggestion you had, before your present examination, expressed or given any opinion upon the legal interpretation, construction, or effect of the concession and brevet of ratification set forth in the said petition, or of the coutume de Paris, or other

laws, ancient or modern, of Canada, relating thereto. And if you had had interviews or consultations with Edward T. Brooks, esq., of Sherbrooke,
1034 Canada, on these subjects, please state in what capacity, and on whose account Mr. Brooks claimed to be acting, and whether you had received any compensation or promise of compensation for your opinion or for your testimony? Have you not read, or heard read, or examined a written opinion given by him or represented by him to have been given in this case, to the counsel of the United States at Detroit, in the summer of 1862? And did you concur in it in whole or in part? Are you not, Mr. Sanborn, or have you not been a law partner of said Brooks?

Fourth cross-interrogatory. State, if you are able, the date at which the 51st article of the custom of Paris, referred to in Judge Badgley's cross-examination, went into operation as law in France, when in Lower Canada, and when in Upper Canada, and when, if ever, it ceased to be law in Upper Canada; and is it not your opinion that in Upper Canada it, as well as other provisions of the custom of Paris, was in full force at the date of the deeds from De Bonne to Caldwell, and from Caldwell to Arthur Noble, respectively? and is it not your opinion that said article and coutume were in force in the late territory of Michigan, as formerly a part of Upper Canada, as to all concessions from the French authorities, down to the time the coutume was expressly repealed by act of legislation of the territory,
1035 (which was on the 16th Sep. 1810?)

Fifth cross-interrogatory. Do you not know from historical sources thrt the *locus* in controversy lay within the chartered limits of Virginia for more than one hundred and fifty years before the declaration of American independence, in 1776, and that that State took possession of the whole northwestern territory, and actually exercised jurisdiction over it from 1778 until it finally ceded it to the United States? And assuming that such was the case, what duty was owing from the grantees of the fief, their heirs or assigns, and to whom, under the brevet of ratification, under the coutume de Paris, or under any other law in force in Canada, in respect of the *locus* after said declaration; and what duty was owing from them and to whom under any such law during the period which intervened between the treaty of Paris, of Feb'y 10, 1763, and said declaration? Was not the common law of England in force in Upper Canada during that period? And if so, and if you have stated that faith and homage were due from the grantees, De Bonne and De Repentigny, please give your reasons for that opinion, and refer to any reported or manuscript decision to the effect, made by the court of last resort in Canada.

Sixth cross-interrogatory. Did not the notarial deed from Pierre
1036 Amable de Bonne to James Caldwell, and the subsequent payment of the balance of the purchase price (in 1798) transfer to the latter in law or equity, (meaning English law and English equity,) the title of said De Bonne to the undivided moiety of the premises described in the deed? And did not the deed from said Caldwell to Arthur Noble transfer to the latter all the title to said Caldwell thereto? If you answer either of these questions in the negative, please set forth particularly the grounds of your answer, and the provisions and principles of law, Canadian, French, English, or American, and any treaty stipulation or principle of the law of nations on which your answer is founded or supported.

Seventh cross-interrogatory. If you have answered to the 4th direct interrogatory, or are of opinion that anything in the nature of the quint or other fines or sums of money were due on occasion of either of said sales of the De Bonne share in said seignory, please set forth particularly by what law they accrued and became due, and to whom they were due? If to the United States, or to the "territory northwest of the Ohio River," to Indiana Terri-

tory, to Illinois Territory, or to the Michigan Territory, as governments, or to the king of Great Britain, or the then republic of France, please set forth particularly the provision or principle of any law whatever or treaty
1037 on which you base your opinion.

Eighth cross-interrogatory. Is there any record of a judicial or legislative forfeiture of lands lying in Upper Canada for want of performance of the ancient ceremony of faith and homage? If so, please set it forth or refer to it in such manner that the counsel for the petitioners can obtain it. And please state whether in your professional opinion the performance of that ceremony at the castle of St. Louis or elsewhere in Canada was, after the 4th of July, 1776, necessary to uphold the title or right of possession to lands lying within the limits of the United States, and particularly the lands in question.

Ninth cross-interrogatory. If in answer to the 6th direct interrogatory you have said that you do not agree (with the witness, Judge Badgley,) that there is no real difference between the words of the concession of 1750 and the confirmation thereof of 1751, that is to say, between the words "the concession shall be and remain null," and the words it "shall be reunited to the domain;" and if you answer that there is "the legal distinction which exists between acts void and acts voidable," please state which implies "void" and which "voidable." If the concession became null *ipso facto* did not the land mentioned in it (if the right of no third person inter-
1038 vened) become part of the public domain of the government? And does the reunion of conceded and confirmed lands to the domain of the government mean anything else but that they become part of such public domain? Is not the resumption of the title and right of possession by the government the sole legal result in both cases? And if the act or default in the one case leads *ipso facto*, to that result, why not in the other? And if in one case a judicial sentence or judgment be necessary to establish the act or the default, why not in the other? Explain this particularly; and in either case, is not the estate created by the document an estate upon condition?

Tenth cross-interrogatory. Please furnish and annex to your deposition correct copies from authentic books or records, in the original French, of the following documents, mentioned in the 7th cross-interrogatory, addressed to said Judge Badgley, and mentioned also in the 6th direct interrogatory addressed to you, viz: 1st. The royal arrets of July 6, 1711; 2. The royal arret of March 15, 1732; and 3. The royal declaration of July 17, 1743. If, however, correct copies of those documents have already been annexed by another witness, you may omit to annex them; but if you are competent to do so, please make, without consultation with or aid from any
1039 other person, and annex to your deposition a correct English translation of each of those four documents. And please state whether correct printed copies of each of them in French are not contained in a printed volume having the following title, viz: "Edits, Ordonnances, Royaux Declarations et Arrets du Conseil d'Etat du Roi, concernant le Canada; Imprimes sur une Addresse de l'Assemblee Legislative du Canada, revus et corriges d'apres les pieces originales depose aux archives provinciales. Quebec de la presse a vapeur de E. R. Frechette, 13 rue La Montagne 1854." Did not the said arret of July 6, 1711, apply exclusively to seigniories which had been granted by the king, and is it not, by its terms, confined to such? Please also annex a correct copy of the other arret of July 6, 1711, intituled "Arret du Roi qui Dechoit les Habitants," &c., and a correct English translation thereof; and state whether this arret is not also limited and confined to lands then already conceded. Please explain the proceeding implied by the word "sommation" in the first-mentioned arret, and by the expression

"sur les ordonnances qui seront vendues par le sieur Bigon" in the last-mentioned or 2d arret of July 6, 1711. Does not each of these ex-
1040 pressions imply a kind of judicial proceeding in which the parties interested had a right to be notified, so as to give him an opportunity to answer the complaint and to defend his rights? If you answer in the negative as to the one or the other of those arrets, please give your reasons. If you have said printed volume, please look at the king's "mandements" on pages 325 and 326 at the foot of each arret, and state what proceedings are meant and intended by the expression found in each: "Toutes sommations contraintes et autres actes dont tu seras requis en vertu du dit arret et des presentes." Does not this language imply a notice to the party complained of, and a regular course of judicial proceeding to determine the justice of the complaint? Is it not your professional opinion that in order to carry out and execute the arret of 15 March, 1732, especially the 3d clause or paragraph thereof, a judicial proceeding and sentence after hearing the parties or giving them an opportunity to be heard was legally necessary? And if not, state why not. Is it not one of the elementary principles in the administration of justice that the party complained of shall have an opportunity to appear and be heard in his defence? And if this principle
1041 was ever wanting in French jurisprudence, will you please designate the period of time and the occasion when it was so wanting. What meaning do you give to the following expressions in the recitals of the declaration of July 17, 1743, viz: "Mais nous sommes informes qu'il n'y a en jusqu'a present, rien de certain ni sur la forme de proceder soit aux reunions des concessions soit a l'instruction," and "aux jugements des contestations qui naissent entre les concessionaires ou leurs ayant cause?" and "tant sur la forme de proceder a la reunion a notre demaine des concessions qui devront y etre reunies," and "a l'instruction des discussions qu'elles pourront occasionner, que pour les voies aux quelles pourront avoir recours ceux qui croiront avoir lieu de se plaindre des jugements qui seront rendus?" Does not this language and the whole recital show it to be the intention of the king to have all the contestations or controversies relating to reunions settled by regular judicial proceedings? and does not this declaration give to any private party the right of appealing to the king in council? If not, what meaning do you attach to the 8th act of said declaration? and what is implied by the expression "Les jugements qui seront rendus par les gouverneurs and intendants tant sur les dites contestations
1042 particulieres que par les reunions a notre domains?"

Eleventh cross-interrogatory. How do you make it out that any one of the four above-mentioned documents had the force of law or any force or effect in the territory of the *locus* after the declaration of American independence? And if you are of opinion that any clause or provision of any of said documents was violated by De Bonne or De Repentigny, or their heirs or representatives, at an earlier date, and that, therefore, the grant had become forfeit or null, in whole or in part, please state the grounds of your opinion, whether that opinion depend upon law or fact, and point out the particular condition in the brevet of ratification which was broken by such violation. What knowledge have you, and upon what information is it based, of the truth of any of the assumed facts itemised or articulated or designated as 1st, 2d, 3d, and 4th in said direct interrogatory No. 6? Are not those statements, so far as you are concerned, purely hypothetical?

Twelfth cross-interrogatory. A paragraph of the 6th interrogatory beginning thus: "2ndly. Do you agree," &c., assumes that the 2d paragraph or provision of the arret of 1732 is applicable to the fief in question—is
1043 that your opinion? Were not acts, prohibited by the 3rd paragraph or provision of that arret, relating to sales of lands with standing

wood upon them, and subjecting such lands to reunion, subject to the provisions of the subsequent declaration of 17 July, 1743? If not, why not? State particularly. The 4th division of the 1st part of the 6th interrogatory assumes that there is a distinction between reunions by jugements or decree and by operation of law, under the 5th article of the declaration of 1743. Does not the 2nd article of the declaration embrace every kind of reunion that in law ought (devront) to be made? Does not every "reunion," whether it be considered in the light of a mere liability to reunion or, as it is here called, "a reunion by operation of law," rest upon facts, the existence or non-existence of which must be proved in order to maintain it? If so, what reason is there for the assumption that there is one kind of reunions "capable of being pronounced," and another existing by "operation of law," not capable of being pronounced? If you profess to derive this distinction from the expression in the arret of 1732, "les quelles seront pariellement reunies de plein droit au domain de sa majeste," which (said lands sold) shall be equally reunited in full right to his majesty's domains, please state what particular signification and effect you give to the words "de plein droit," either by themselves or as connected with the words "pareil-
1044 lement reunis;" and if such a distinction has been recognized by the decision of any court in Canada, please refer to the decision in such manner as to enable the counsel for the petitioners to obtain it. And does not the 5th article of the declaration of 1743 prohibit all reunions which should not henceforth be pronounced or declared as in that declaration mentioned?

Under heading II, division 1, of said 6th interrogatory. Supposing the several statements here "assumed" to be untrue, would you have any opinion about the "sufficient compliance" with the conditions? If, however, you have answered this division of the interrogatory, that under such assumed and false state of facts you are of opinion that the conditions were not so complied with as to defeat a judicial proceeding for a reunion, please state what judicial decision or adjudication, Canadian, English, or American, you have your opinion upon.

If to the 2d and 3d divisions of this interrogatory you have answered that you know of any such "case" or condition of things as therein mentioned, please state where and when it occurred, and all the facts pertaining to it, particularly and at length, and whether any litigation grew out of it, in what court, and what was the final decision.

Under the 4th division of this interrogatory. Please annex copies
1044 from authentic books or records of the "arrets and judgments" here referred to, of the act of reunion contained in the acceptance of the surrender of the Company of New France, the act of reunion contained in the edit suppressing the West India Company, and of the arret reuniting the whole province of Acadia; and also a correct English translation of those several documents; unless you shall answer that said acceptance and other papers therewith connected are contained in the volume whose title is above set forth, pp. 30, 31, 32, and said *acte* of reunion relating to the West India Company at pp. 74, 75, 76, 77, and 78, and the said arret of reunion of Acadia in vol. 2 of said publication, pp. 132 and 133; in which case you need not furnish copies or translations of those documents.

If you have given "your own views as to the practically paramount effectiveness of the will of the crown under the French rule and the constitutional checks, if any, which were effective to control the will of the crown, and to obtain restitution in case of legal informality in the exercise of the will of the crown, by taking possession of an abandoned seignory under such circumstances," as are assumed in said four articulated assumptions of fact referred to, if you have given your "own views" on the matters and things

embraced in this part of said 4th division, will you please further state whether, during the reigns of Louis XIV, XV, and XVI of France,
1046 it was the practice of the crown, in its dealings with private persons, to enter upon the lands it had once granted to them in the colonies, and resume possession without their consent without notice of the ground of complaint and without judicial trial or sentence? And was not the contrary the practice of those sovereigns? And if you found your views or opinions upon the assumption of an "abandonment" of a seignory, please set forth what acts or what facts in your judgment amount to an abandonment. What rule or principle of law do you refer to, and in what accredited writer on the science of law do you find the same?

Under the 5th division of the 2d head of said 6th interrogatory, please furnish correct copies of the said 113th and 118th articles of the coutume de Paris and annex them to your deposition, if not already done by the witness who preceded you, and say whether, in your professional opinion, they were intended to apply as a law of limitations between the sovereign, the grantor, and the subject, against the latter and in favor of the former, and if you know of any case where they have been so applied in a court of justice please mention the case particularly so that counsel may find access to it.

1047 Under the 6th division of the 2d head of the 6th interrogatory, in what manner and at what time was the common law of England first introduced into Upper Canada? What effect in this respect had the proclation of Geo. III bearing date "at our court of St. James, the 7th day of October, 1763, in the third year of our reign?" Observe, this proclamation contains this assurance: "And in the mean time, and until such assemblies shall be called as aforesaid, all persons inhabiting in or resorting to our said colonies may confide in our royal protection for the enjoyment of the benefit of the laws of our realm of England, for which purposes we have given power under our great seal to the governor of our said colonies respectively, &c."

As to the remainder of the said 6th division, please state and set forth particularly the written law upon which you found your opinion (if you have given it) that the right of the crown of Great Britain to a reunion of the seignory in question existed in the locality in question under the British government from 1763 to 1783; and if you know of no such written law please refer to the author in whose writings the unwritten law to that effect is to be found. Please furnish a copy of the said "22d question under the 18th Vic., c. 3, provincial," referred to, and also of the respective replies of the 12 judges thereto, referred to in this division. Please also furnish a
1048 copy of "question 21" and "question 23," mentioned in this division, and of the answers of the judges thereto. Please also refer me to the proper volume of statutes for the "seigniorial act of 1854" here referred to, and state whether these questions and replies did not in terms or by plain implication relate only to Lower Canada.

Under the 7th division of said 2d head of the 6th interrogatory, if you have answered that De Repentigny's right to hold or to transmit by descent his interest in the seigniory was effected by the causes assumed in this question, please state particularly what law or treaty stipulation you rely upon in support of your opinion. Please look at the first article of the treaty between the United States and Great Britain of Nov. 30, 1782, acknowledging the independence of the severed United States, and assuming that the *locus* was then within the chartered limits of Virginia, and that Virginia had extended her actual jurisdiction over it as early as 1778 or 1779, are you of opinion that, by the laws of nations, any law of Canada or of England would have operated to disable De Repentigny to hold the land or to transmit it by descent? If so, what was or is that law, and where to be found? And as to the claim of "abandonment," please state what law of the United

States or of the Territory or State of Michigan authorized the government of the United States to take possession of and hold the land as "abandoned" or "derelict?" Please furnish any evidence you have of an "express personal remonstrance in writing of the governor general of Canada against De Repentigny's persevering in foreign allegiance" until 1786. Do you not hold that the 4th article of the treaty of 10th Feb., 1763, required all French inhabitants in Canada who retired from Canada within 18 months to sell their estates to British subjects, and that in default of such sale their estates became forfeited to the crown of Great Britain, or liable to forfeiture or escheat to that crown? If such a case has arisen in Canada and been adjudicated will you please refer to it, so that counsel may find it; and if you are aware of any decision of an English or American court to that effect, please refer to it. If escheat be occasioned by want of inheritable blood, how do you make it appear either that the child of De Repentigny on his death, in 1786, or the child of De Bonne on his death, in 1760, did not inherit as heir-at-law? If De Repentigny was an alien by the law of England or of Canada, and you are of opinion that the crown might, during his life, lawfully enter upon and take possession of the fief without legal proceedings for that purpose, please refer to the law book or decision which supports that opinion.

Under the 8th division of head 2 of the 6th interrogatory, please point out by proper references the judicial decisions, law books, or other documents or records upon which you found any opinion you may express in answer to this division or any part thereof.

Thirteenth cross-interrogatory. The Franquet maps. (7th interrogatory.) Are not the maps made by Mr. Franquet regarded as authoritative acts of the French government by the courts of Canada and by the public there? Did you ever see the orders under which he acted? If you have possession or control of any of the "descriptive memoirs," mentioned in the 7th interrogatory, relating to the seigniory in controversy, please annex them, or true copies of them, to your deposition, and state from whom and when you obtained them, or any of them.

Fourteenth cross-interrogatory. In answering the 8th direct interrogatory what meaning do you attach to the words "an abandoned seigniory?" and if you have answered that "the law of the coutume de Paris is the same as that of England, namely, that proof of possession, without proof of payment of rent, is prima facie evidence, and raises the presumption of an estate corresponding to seizin in fee in the occupant," as is there assumed, please point out what article or clause of the coutume, what passage in any book on the common law of England, and what adjudicated case you refer to in support of your answer; and state, furthermore, what receiver or agent the crown or the government of Canada had authorized to collect the rents from the tenants or occupants of said seigniory.

Fifteenth and last cross-interrogatory. If, in answer to the 9th, 10th, 11th, and last or general interrogatory, you have referred, in support of your opinions, to any arret, edit, declaration, ordonnance, statute, governmental or judicial order, decision or decree, or reported adjudication, not already set forth or referred to as above required, please furnish copies of and annex the same to your deposition, if convenient, and if not convenient please set forth distinctly where counsel can find the same. And if you have given it as your opinion that in the law of England the principle of an "adverse possession by the crown" is anywhere or under any circumstances recognized as against the subject or a private person, please refer particularly to the decision, the statute, or the treatise on which you rely.

(Signed) J. M. HOWARD,
Sol. and of counsel for petitioners.

Sept. 2d, 1863.

Above cross-interrogatories are allowed, subject to objections as to competency or irrelevancy.

By consent, Sept. 2d, 1863.

(Signed) ALFRED RUSSELL.

1053 The Honorable John S. Sanborn, queen's counsel and barrister of the town of Sherbrooke, in the province of Canada, having first taken the oath mentioned in the foregoing commission, testifies as follows:

Answer to first interrogatory. My name is John Sewall Sanborn; my age is forty-four years; my residence is Sherbrooke, in that part of the province of Canada formerly called Lower Canada. I am an advocate, barrister, solicitor, and attorney in said Lower Canada. I have practised law at Sherbrooke aforesaid between sixteen and seventeen years. I am a person learned in the French laws and usages in Canada. The custom of Paris is the basis of the civil laws of Lower Canada, and in order to practice the law there it is necessary to become familiar with the custom of Paris, and generally with the ancient laws of France, as they existed prior to 1763. My practice has been extensive, and I have had occasion to acquire a knowledge of the laws relating to the feudal tenure of Canada, from having been seven years in the provincial parliament of Canada, from 1850 to 1857, inclusively, during which period the seigniorial tenure of Lower Canada was under discussion with a view of its abolition, and all its incidents
1054 and all matters pertaining to it were investigated, and in order to a full understanding of the subject a person was sent *sent* to France to obtain all possible information regarding seigniorial grants or concessions, and such information was printed and laid before parliament, and I have made myself acquainted with the decisions and elaborated judgments of the twelve judges who were constituted by the provincial act of 1854 to abolish the seigniorial tenure in Lower Canada, a tribunal to determine the respective rights of seigniors and censitaires (tenants) under said tenure, with a view of a proper adjustment of indemnity, for seigniorial rights and dues taken away by said provincial act.

Answer to the second interrogatory. I have read the documents and evidence referred to. With respect to Judge Meredith, he is, and has been for several years, one of the judges of the court of queen's bench, in Lower Canada—the court of appeals and dernier resort in Lower Canada—and is a learned, able, and laborious judge. The Honorable Louis T. Drummond was for many years attorney general for Lower Canada, and was at the head of her majesty's government there when the seigniorial act of 1854 was passed, and was the author of that act, which alone is sufficient
1055 proof of his acquaintance with the laws of Lower Canada, and particularly the laws relating to land tenure.

To the third interrogatory. I should accept Mr. Badgley's interpretation of the 51st section, or article of the custom of Paris, upon the sales of De Bonne to Caldwell, and Caldwell to Noble, if by these deeds I considered the seigniory to have passed from the vendors to the purchasers. I should, however, disagree with him in his inference, drawn from various arguments and propositions passim in his evidence, that supposing the property in such seigniory, possessed by the vendors, to have passed to the purchasers, it would vest the absolute property in fee simple in the purchasers, because the land to which such deeds related had become a part of the territory of the United States, where the feudal tenure from the genius and procedure of the laws there could not exist. The seignior, undoubtedly, was proprietor of his seigniory, but he was a proprietor subject to the incidents and conditions of the feudal tenure as it existed in Lower Canada, and limited and restrained by the terms of his grant from the French king. The object of these grants

was, first and mainly, to secure a settlement of the country; and for
1056 the seigniors to become seized as proprietors of the seigniories granted, they must locate themselves upon them and have feu et lieu (hearth and home) there, and cause settlements to be made thereon by tenants without pay other than ordinary seigniorial rents. The following amongst other conditions are found in the grant of the Sault St. Marie seigniory, namely, "to hold and possess the same by themselves, and to cause the same to be held and possessed by their tenants, and to cause all others to desert and give up said land." The seignior had the *dominium directum*, and the vassal the *dominium utile*. The following dictum was declared unanimously by the twelve judges who determined the questions submitted under the seigniorial act of 1854 in Lower Canada, one of whom was the said William Badgley: "At the time of the introduction of the custom of Paris into Canada the effect of the feudal contract, whether by subinfeudation or accensement in that part of France formerly known as 'La Prevote et Vicomte de Paris,' was to divide the estate between the seignior of the fief and his subfeudatory or tenant, censistaire, in such manner as to retain to the former the immediate demesne *dominium directum*, (domaine direct,) and the *dominium utile* (domaine utile) to the latter."

1057 It is assumed that the actual possession by the seignior and his tenants was never had of the seigniory in the sense implied in the grant, *i. e.*, actual settlement, and physical detention for colonization and improvement, and that at most there could only be a right to do this in the future, and this right had been prevented by the appropriation of the territory by the United States. The right of the claimants under such circumstances, if there is a right, is necessarily converted into a claim of indemnity for loss of property. This indemnity cannot be granted as if the property were held by the seignior or his representatives in fee simple. If this were the case he would get the indemnity for loss as seignior, and as vassal as well. I do not consider that Mr. Badgley has presented the law relating to tradition as necessary to complete title to property in all its bearings. The French law, as it has always existed in Lower Canada, renders tradition absolutely essential to complete a sale of real property, so as to vest the property in the purchaser. Tradition in its proper sense is a transfer of actual possession from the seller to the purchaser. Feigned tradition is that of which Mr. Pothier speaks in the passage cited by Mr. Badgley. This, doubtless, operates to transfer the property so far as the vendor is concerned,
1058 but if the vendor at the time of the execution of such deed is not in a position to deliver the immoveable sold, this feigned delivery or tradition is unavailing so far as third parties are concerned. Ferriere, in his Dictionaire de Droit, says: "Ainsi le proprietaire d'un fonds m'eu fait une donation et me met en possession d'ice liu, j'eu deviens le proprietaire par cette tradition sans laquelle je n'aurais que jus ad rem c'est a dire, le droit de poursuive le donateur pour me livrer le fonds qu'il niavait donne et je n'aurais pas jus in re c'est a dire le domaine ou la propriete quia non pactionibus sed traditionibus dominia verum transferunter d'ou il s'en suit que deux acheteurs ou donateaires d'un meme fonds, celui qui en a ete mis en possession le premier en est proprietaire quoique son contrat soit posterieur a celui de l'autre." It was held in the case of Mallory and Hart, in the queen's bench in Lower Canada, the court of appeals in dernier resort, that in case of sales of wild lands tradition is necessary to convey the right of property. The question arose in this way: The land in question was sold by one Barker in 1803 to one Buel by notarial deed. The deed was perfect so far as the contract was concerned and translatif de propriete. The land was never put into possession of Buel, and remained un-

settled, and in 1814 the same land was sold at sheriff's sale upon
1059 Barker. It was claimed that it was sold *super non domino et non possidente*, the land having been eleven years before conveyed by Barker to Buel. The judgment was rendered by Sir James Stuart, chief justice, who was the most eminent jurist in Lower Canada, and his language was: "We are of opinion that in the sale from Barker to Buel there was no tradition, and that Buel had no possession, while we are of opinion that Barker was in possession at the time the property was sold to him."

There have been cases where our courts have considered feigned tradition sufficient as against squatters who possessed in bad faith a distinction being made between natural and civil possession. I am clearly of opinion that the possession of the United States of the property in question, as a part of the public domain presumptively, cannot be viewed in any other light than that of a party holding by title in good faith, and consequently that feigned tradition could not vest the property in the purchasers so far as the United States are concerned. The sale of an undivided portion of an unmovable is subject to the same rules as the sale of the whole. The seignior, as I have before remarked, is a proprietor of the seigniory subject to the incidents of the feudal tenure. It is not a real right, but absolute property. This is the law of Canada. The case I have cited is of the
1060 highest authority, and sets forth, I believe, the true principle of the law. The law recognizes the distinction between the jus ad rem and the jus in re. It is proper to remark, however, that in actions petitoire, that is to recover the possession of property based upon title, a person who has never had possession or tradition may recover, if he invokes the titles of his predecessors back to a period anterior, to the possession of the defendant. On the other hand, A sues B for land. A has a title in good faith, dated, say, 20 January, 1850. B has no title, but proves possession *animo domini* since 1849. A's action must fail unless he proves that he derived from C, who was in possession anterior to B. This is all predicated upon the assumption that the lands were in Canada, and subject to Canadian law. I am not prepared to say that it has any bearing upon the case in question.

To the fourth and fifth interrogatories. I do not differ from Mr. Badgley in his views upon foi et hommage or droit de quint. I made no computation of interest upon the quint, because no interest accrued by the French law. There are no other fines than the quint accruing to the sovereign on the state of facts mentioned. The omission of the language de la mettre
1061 en valeur in the ratification is unimportant. There is enough in the terms used in this contract to disclose the royal intentions and stipulations in the grant, and the French policy of settlement and population is disclosed abundantly by various arrets, edicts, and executive facts with relation to all the grants of a like nature.

To the sixth interrogatory. The twelve judges constituting the seigniorial court in Lower Canada declared that "the manifest intention of the French kings was to promote the settlement and cultivation of the lands of the country, but the concession of lands for that purpose was not made obligatory by any law anterior to the arret of 6th July, 1711." For the affirmative: Bowen, Aylwin, Duval, Caron, Day, Meredith, Short, Badgley. For the negative: Lafontaine, Smith, Mondelet, Morin.

It was unanimously determined by said twelve judges that whatever difference of opinion may exist as to the obligation of the seignior to concede the lands in his seigniory, prior to the arret de marly (1711) being compulsory, it became so by that act, and the inhabitants of the country thereby had a right to demand by suit, and obtain of any seignior, lands

unconceded in his seignory at a rent charge a titre de redevance with-
1062 out the exaction of any sum of money for such concession. One circumstance is noticeable here. The government of France, by this arret de marly, assumed the right to make an ordinance determining the rights of the inhabitants of the country in these seigniories, and (as the majority of the twelve judges determined) of essentially abridging the rights of the seigniors. Property and privileges, once conceded from the government by a definitive charter or patent, is never resumed except upon the plea of public necessity and indemnity given. The inferrence from this arret de marly to my mind is that seigniorial concessions from the French government were made as a part of the administrative policy of the government in the interest of colonization rather than as grants properly so called. The consideration of this point may have a bearing upon the question, whether the government could resume a seigniory from the failure on the part of the seignior to fulfil the stipulations contained in the contract of concession or other default on his part, without the interposition of a judgment. If the king could withdraw any portion of the grant it is plain that he could revoke the whole grant. Sir Louis H. Lafontaine, chief justice, in his elaborated judgment in the seigniorial court, remarks: "We have seen that on the 10th March, 1626, the seigniory of notre dames des anges had been granted to the Jesuit fathers by the Duke de Ven-
1063 tadour; nevertheless, the company of New France made them a new grant of it on the 15th January, 1637, and why was this, if the king had not the right to intervene in a grant already made? if this grant were to be irrevocable? if the grantee had the liberty to preserve intact the forests with which the land was covered? Let us allow the company themselves to give their reasons in the matter. "The reverend father of the Society of Jesus have shown to us that they have heretofore been put in possession of certain land situate on the River St. Charles, in New France; and inasmuch as by the edict of the king establishing our company all gifts and grants anterior thereto have been revoked, and the whole given to the said company to dispose of the same, they have demanded of our said company to maintain and guard them by the authority thereof in that which was formerly conceded to them."

Judge Duval, one of the judges of the queen's bench, in his elaborated judgment in said seigniorial court, in discussing the question submitted by the seigniors growing out of the seigniorial act of 1854, namely, "that a right without limitation of time is vested in every seignior, and that of this right, confirmed by imperial legislation, he cannot be deprived by an act of the colonial legislation," remarks that "to ascertain with accuracy the
1064 nature and extent of the right so conferred it is necessary to repeat what I have before stated, that the commutation is not made imperative, but is optional with the seignior and censitaires. It is what the French lawyers call une faculte. Merlin, speaking of rights acquired, says: 'Mais tel n'est jamais un droit purement facultatif a moins qu'il n'ait ete exerce et par l'exercise qui a ete fait la chose qui en est l'objet ne soit devenu notre propriete, en effet il en est des facultes accordees par la loi comme des facultes accordees par des individus. Tant que cellesci ne prennent point la caractere de droits contractuelles, elles sont toujours essentiellement revocable, or le legislature ne contracte jamais lorsqu'il accorde la permission, et ceux a qui il la retire avant qu'ils en aient fait usage n'ont aucune pretexte pour s'en plaindre.'" In English, "But such right is never a right purely optional unless it has been exercised, and it is by the exercise which has been made of it that the thing which forms the object of the right becomes our property. Indeed, it is of facultes (privileges) granted by law, the same as those granted by individuals. As long

as they do not partake of the character of contracts they are always essentially revocable. The legislature never contracts when it grants a privilege. It permits, but it does not bind itself. It retains always the power
1065 of withdrawing its permission, and those from whom it withdraws a privilege granted before they have availed themselves of it, have nothing to complain of." Upon this Judge Duval remarks: "The opinion thus expressed by Merlin is so consonant to reason, and when applied to contracts so conducive to the maintenance of that good faith, the observance of which every legislator must enforce, that it requires no elaborate argument in its support." It will enable the reader better to see the force of the authority cited from Merlin to state that under the French law acceptance is necessary to complete a contract, and where that acceptance is, from the nature of the contract, the exercise of the right accorded; without such exercise of the right there is no acceptance.

This concession to De Bonne and Repentigny from the petition recited in the preamble of their title appears clearly to have been made for the purpose of settlement, and settlement with a view of extending and ensuring the dominion of France in that part of New France, "to afford a safe retreat for voyagers from the neighbouring posts and western sea, and the destruction of the trade of the English with the Indians." The settlement to be made was that indicated by the above-cited language. If it fell short of the object sought, the settlement should be bona fide, not simulated. The
1066 French law exacts good faith in the performance of all contracts. Putting in abeyance, for a little, the question whether the French government after the establishment of the superior council of Quebec in 1663 to the time of the session of Canada to England, and the British government afterwards possessed and exercised the right *ex mero motu* to resume and reunite a seigniory with the public domain by reason of failure on the part of the seignior to perform the conditions upon which the concession was made, there is another question the decision of which, so far as this case is concerned, may render the discussion of the first question unnecessary. I mean this: If the seigniory of Sault St. Marie was liable to forfeiture when the territory included in it became part of the sovereign domain of England, was there not an impossibility of its performance afterwards inasmuch as it had passed out of the dominion of the French king and, of course, the policy of the French government and its interests in establishing settlement and dominion over this territory ceased to exist. And even if the condition of settlement and the performance of foi et hommage could have seized the grantees of the said seigniory in the property thereof between the date when it became a part of the sovereign
1067 domain of England and the date of its cession by treaty to the United States, the main essentials of performance of conditions of concession made by the settlement of the seigniory were not, as a fact, achieved, and the seigniory became a part of the territory of the United States when the rights of the grantees had been forfeited, and there was no possibility thereafter of their performance. The grantees by their own want of diligence allowed their permissory rights to lapse. The French government by the chances of war had lost Canada, and had no further interest in promoting settlement at the Sault St. Marie, the equitable as well as legal claim for indemnity is gone. It is a case of *damnum absque injuria*.

There is another principle of French law that may have a bearing in the consideration of this case, that where rights secured under a contract have been forfeited by nonfulfilment of the conditions upon which the rights are secured, and those conditions are of such a nature that an offer of fulfilment cannot be made in the action to maintain such rights, the defendant has a right to plead such forfeiture as a bar to the action and ask to have the

contract declared null. In the present case, if the grantees did not avail themselves of the permissory privileges secured to them so as to obtain the objects of the French government which were the inducements for
1068 making the grants until the territory passed from said government to a government where no such public policy existed as induced the grants, and where the tenure could not be exercised, it may be fairly urged that their claim has been lost for want of diligence and good faith on their part. Respecting the right of the sovereign power to resume a seigniory granted and reunite it to the public domain by reason of the conditions of the grant not having been complied with, the twelve judges appear to admit as an unquestionable fact that the king of France possessed and exercised the right to revoke any grant when the objects for which it was made were not secured and the main design was settlement and cultivation of the soil. This power was conferred upon the conseil soverain sitting at Quebec, by royal edict, in 1663, but it is noticeable that in this edict the king still reserved the right "according to his sovereign power to change, reform, and amplify said laws and ordinances, of derogating therefrom, of abolishing them, &c." It seems that this jurisdiction was exercised in various ways, and the king caused reunions without uniformity of procedure till the arret of 1743, when the governor and intendant were jointly vested with the jurisdiction of adjudging reunions to the crown to the exclusion of all other tribunals. Doubtless the proper and legitimate mode of
1069 obtaining the annulling of a grant by reason of forfeiture before the governor and intendant was, as Mr. Badgley observed, by an information or suit at the instance of the attorney general, the parties being summoned, and a judgment obtained. After hearing given to the parties interested, the twelve judges, including Mr. Badgley, affirmed the following proposition: "All the judiciary powers exercised by the intendant in civil matters before the cession of the country devolved upon the civil tribunals of the province." The jurisdiction for reuniting a seigniory to the public domaine was conferred upon the governor and intendant jointly. The intendant alone only had the jurisdiction to unite the concession of a tenant to the seigniory in case of failure by the tenant to perform the obligations due as between him and his seignior.

As, by what I shall quote elsewhere, it appears that the judges were equally divided upon the question whether the joint powers of the governor and intendant were conferred upon the ordinary courts of justice established in Canada subsequent to the conquest, the reason for this difference of opinion of the judges upon this point was the fact that the governor and intendant possessed administrative as well as judicial powers, while it was contended by six of the judges that only judicial powers were con-
1070 ferred upon the courts of justice in Canada subsequent to the conquest. In deciding upon cases of pretended forfeiture, the governor and intendant followed the procedure of a court of justice, but at the same time had the delegated and representative authority of the king. And while it is true that the king established this tribunal to do what often prior thereto he had done *ex mero motu*, it is, in my opinion, equally true that an absolute and incurable forfeiture could take place, and the seigniory so forfeited pass into the possession of the crown, without judgment of forfeiture, and so being in the possession of the crown, it could not be claimed back, because any tribunal having a right to decide between the claimant and the crown upon the equities between them would have a right, and would of necessity be compelled, to pronounce the claim forfeited, or, in other words, render a judgment of forfeiture, provoked and rendered necessary by the claimant's pretensions. This is not only reasonable, but according to procedure under the French law, in relation to all contracts; and grants are not to be

interpreted as more favorable to the grantee than contracts between individuals; but, on the other hand, even under the English law, (which is far more unyielding than the French law in the matter of grants from
1071 the crown,) in all cases of doubt as to intention, the advantage is to be given to the crown.

Mr. Badgley remarks in his answer to the 13th cross-interrogatory that he is not aware of any case of resumption by the crown or Canadian government of an abandoned seigniory. There is an instance of the resumption of the Jesuits' estates, consisting of several seigniories of great value. The Jesuits' estates in Canada were held under the same kind of grants or concessions as other seigniories, and were made with a view to promote the progress of the Roman Catholic religion and the propagation of this faith among the Indians. When this order passed away these estates were resumed by the crown without any judgment of confiscation, but by simple resolution of the governor in council. The following entry is to be seen in the journals of the Lower Canada house of assembly, of 12th March, 1800:

"The Honorable Mr. Young, one of his majesty's executive council, rose in his place and said that he was authorized, by his excellency the lieutenant governor to inform the house that his excellency, by and with the advice of his majesty's executive council, to take possession of the estates of the order of Jesuits, in the name and as the property of his majesty." The revenues of these estates have been from year to year appropriated, and are so now appropriated, as a part of the revenues of the province to purposes of education. It should, however, be observed that in the case
1072 of the Jesuits, the last of the order had died, which rendered the right of the crown clear to reunite them to the public domain, but it shows that in this case the formality of a judgment of reunion was not considered essential. It may be remarked, also, as a case somewhat analogous, that the clergy reserve lands, which were set a part by the government of Great Britain, for the support of a protestant clergy in Canada, comprising one seventh of the ungranted lands of the crown, have, by legislative enactment, and without any judicial process, been secularized and appropriated to general purposes of public expenditure. It must be borne in mind that there is an essential difference in the nature of these concessions of the French kings, in New France, from chartered rights, granted by the crown of England. The genuis and spirit of the two governments are unlike. The government of the inhabitants of New France was parental and despotic in its character, and the French government dealt with the rights of property in a manner much more arbitrary than is consistent with the spirit of the British constitution, or the sentiments of Britons. I don't think Mr. Badgley has taken a fair view of the operation of the arret of 1732, containing the clause cited, to wit, "les dites terres demeureront reunies au domaine de sa majeste en vertu du present arret et sans qu'il en sait
1073 besoin d'autre." A judgment was the proper means of declaring forfeiture of seigniories, and their reunion to the crown domain, but it is equally true, and consistent with a sound interpretation of the French law, that the non-compliance with the conditions specified in this arret, on the part of the seigniors, rendered their grant void, and if the crown exercised the right of possession and of appropriation of such seigniories still en bois, it would give such seigniors no right legal or equitable, to be put into possession of such seigniories, or to be indemnified for the loss of them. I should regard the forfeiture in such case as final and irremediable, and as susceptible of being pleaded in any tribunal, where a claim can be made to revindicate such seigniories, and upon a demand to have such concessions declared void, in the defence of such claim, such competent tribunal to pro-

nounce upon the respective rights of the parties, according to procedure under the French law, can declare forfeiture to have taken place and the rights of the claimants lost.

Respecting Mr. Badgley's views of the 113th and 118th articles of the custom of Paris, I think that so long as no act of a public character, either a judgment of confiscation, or a resolution in council, or actual resumption by taking possession and appropriating such land by the crown, existed, prescription could not operate to bar any rights to the seigniory in
1074 question; but if the said seigniory had been, by any of these means, taken into the crown domain prior to the treaty of 1783, I should consider that prescription, under the 113th article of the custom of Paris, as of a possessor by title in good faith would commence to run. My reason for this view is the generally accepted principle that a government cannot be presumed to act without good cause or to be in bad faith. It is, however, right to observe that as no prescription runs against the king, it may be doubtful whether it should be claimed in his favor. As to any prescription or limitation that might or might not accrue after this seigniory passed into the United States, I think, with Mr. Badgley, that the *lex rei sitæ* governs, and of this I do not consider it my province, as giving evidence of Canadian law, to speak. I do not think Mr. Badgley's definition of a possessor de bonne foi, under the article 113 of the custom of Paris, is exact. In the case of a proprietor it is sufficient for him to be considered in a legal sense in good faith if he has acquired property for a valuable consideration of a person having a *prima facie* title. The fact that it may come to his knowledge, after acquiring the property, that an adverse title exists, does not render him a possessor in bad faith, or prevent prescription under said article prevailing in his favour. In expressing this opinion I am quite
1075 aware that French writers tell us that the canon law is followed under the custom of Paris as adverse to the civil code of France, and which required good faith in the possessor from the commencement to the termination of the prescription. This I understand to apply to the case where the possessor avails himself of the possession of his predecessors as well as his own to accomplish the period of prescription; in such case he must abide the consequences of the bad faith of his predecessors. It does not apply to a man's personal possession who has acquired in good faith. The facts that may come to his knowledge subsequent to his acquisition of the property tending to throw doubts upon his title do not militate against his right to plead prescription. Ferriere, in his commentary upon the 113th article of the custom of Paris, says: "C'est aussi moir avis que tout acquereur a titre particulier peut prescrire *ex sua persona* quoique son auteur fut de mauvaise foi." In English, "It is also my opinion that a person acquiring property under a definite title can prescribe, *ex sua persona*, although the person from whom he derived was in bad faith." The reason given for this view is that, upon any other supposition, a possessor with title could not, in the event of his predecessor's being in bad faith, ever prescribe, and would be in a worse position than a possessor without any title, which would
1076 be absurd. The prescription under the 118th article of the custom of Paris gives to the possessor without title, who has occupied openly, peaceably, and uninteruptedly for thirty years or more, an indisputable title. The following question was submitted to the twelve judges composing the seigniorial court under the act of 1854: "During the period between the cession of the country and the passing of 'the seigniorial act of 1854' did there exist a tribunal competent to exercise the powers and jurisdiction conferred on the governor and intendant by the said decree of 1711 relating to the concession of seigniorial lands?" For the affirmative, Lafontaine, Caron, Smith, Mondelet, Short, Morin. For the negative, Bowen, Aylwin, Duval, Day, Meredith, Badgley.

I may remark here that many facts, judicial opinions, and *dicta*, having a bearing upon the questions demanded in this interrogatory, will be found in two volumes of Lower Canada reports, styled "Seigniorial Questions A and B;" and in a case of "Wilcox *vs.* Wilcox," decided in the queen's bench, and fully reported in "The Lower Canada Reports, volume VIII pp. 34, it was declared by the judges of said seigniorial court that the arrets of 1711 and 1732, were in force at the time of the passing of the
1077 seigniorial act of 1854." For the affirmative Lafontaine, Duval, Caron, Day, Smith, Mondelet, Meredith, Short, Morin. For the negative, Bowen, Aylwin, Badgley."

By the treaty of 1763, by which Canada was ceded by France to Great Britain, pursuant to the articles of capitulation of 1760, between Major General Amherst and the Marquis of Vaudreuil, it was evidently contemplated that such inhabitants of Canada as chose to abandon the province should remain aliens, or, in other words, retain their allegiance to the French government, and permission was given them "to sell their estates, provided it be to subjects of his majesty" the king of Great Britain, and the time limited for them to dispose of their estates was eighteen months after the treaty. With this exception, and thereafter, they were subject to all the disabilities of aliens. There appears to be no necessity to discuss the fact, as to whether Chevalier Repentigny was an alien, for he is declared to have retained his allegiance to the king of France in the petition in this case. I cannot come to any other conclusion than that persons situated as he was were at the time of the conquest, and long after, regarded as aliens, as subject to the disabilities of aliens, as understood by the laws of England.

This is plainly to be inferred from the opinion of Attorney General
1078 Norton, in reply to the "lords commissioners for trade and plantations" of 27th July, 1764, (vide Chalmers's Opinions of Eminent Lawyers, pp. 364-5-6.) Among other things he remarks "I am humbly of opinion that those subjects of the crown of France and Spain who were inhabitants of Canada, Florida, and the ceded islands of the West Indies, and continued there under the stipulations of the definitive treaty, having entitled themselves to the benefit thereof by taking the oath of allegiance, are not to be considered in the light of aliens, as incapable of enjoying or acquiring real property there, or transmitting it to others for their own benefit &c., &c."

The proclamation of 7th October, 1763, following the treaty tends strongly to corroborate this view, for it uses this language "all persons inhabiting in or resorting to our said colonies may confide in our royal protection for the enjoyment of the benefit of the laws of our realm of England, for which purpose we have given power under our great seal to the governors of our said colonies, respectively, to erect and constitute, with the advice of our said councils, respectively, courts of judicature and public justice within our said colonies for the hearing and determining of all causes, as well criminal as civil, according to law and equity, and as near as may be agreeable to the laws of England, &c.

By the act "for making more effectual provisions for the govern-
1079 ment of the province of Quebec" in 1774 many privileges were secured to the subjects of Great Britain in Canada which had not existed before, and which evidently were not contemplated by the treaty or at the time of the said proclamation, and amongst other things it was enacted "that in all matters of controversy relative to property and civil rights resort shall be had to the laws of Canada, as the rule for the decision of the same." This was not declarative or retroactive, but prospective in its operation. It was long after this that the case to which Mr. Badgley refers of Donegani *vs.* Donegani was decided, in which the question of alienage was raised, and in which in dernier resort it was held that the English

law determines who are aliens, and their rights would be determined by the local law of Canada. This cannot be considered as declarative of law at the date of the conquest, and from that date to the passing of the Quebec act. The decision, however, in this case has not been accepted as good law.

In a case decided by three superior court judges at Montreal, namely, Day, Smith, and Mondelet, 28th June, 1854, Corse *vs.* Corse, an opinion adverse to that *dictum* in Donegani *vs.* Donegani was expressed by all the judges. Judge Smith said "there" to wit, in Donegani *vs.* Donegani, "it was ruled that the public law of England should determine who is an alien, and that determined, recourse should be had to the French law to
1080 learn his disabilities. We think this wrong; you cannot separate the definition of what an alien is from what he can do. That is the practical result; what an alien is, is simply a definition, but to establish his rights is what is important." Judge Day said: "I have always thought that there was a want of soundness in the distinction made in that case, (Donegani *vs.* Donegani) between what an alien is and what his disabilities are. The law of aliens rests upon grounds of public policy, and is derived from the authority of the sovereign to deal with his own subjects and foreigners on different conditions, and to decide that parties having no stake in the country shall not hold property in the country. It is based on allegiance due from the subject to the sovereign, and is not a penalty, but a matter of expediency and public policy." Judge Mondelet said: "To say that the law of England shall decide what an alien is, and the coutume of Paris what his disabilities are, is not only a *contre seus*, but an impossibility." The proposition which Mr. Badgley affirms as a legal postulate, that the cession of Canada to France, so far as seigniors' rights were concerned, substituted the king of England for the king of France, is doubtless correct. It is, however, as it appears to me, quite inconsistent with Chevalier Repen-
1081 tigny's holding the undivided moiety of the seigniory of the Sault St. Marie, and that he should remain an alien to the British government. It is of the very nature of the feudal tenure that land be held subject to allegiance to the crown. The inference from these legal facts drawn by me is that Chevalier Repentigny, by his declaration of option to retain his allegiance to the king of France, and failing to sell his estate (if any he had) in the seigniory of Sault St. Marie, accepted the alternative of the contract made by his sovereign in his behalf with the sovereign of England, and voluntarily abandoned his pretensions to said seigniory.

It has always been a moot question whether the common law of England existed in its entirety in Canada from 1763 to 1774, the date of the Quebec act, so far as relates to civil rights but distinct from that; my reasons before given will show, if I am not in error in my conclusions, that so far as relates to the disabilities of aliens it was in force and acted upon.

To the seventh interrogatory: I have not sufficient knowledge of the facts inquired of in this interrogatory to give evidence thereon.

To the eighth interrogatory: So far as Mr. Badgley's evidence in the last clause of his answer to the 17th interrogatory states the proposition that a squatter upon land held in seigniory cannot by his possession change
1082 the nature of the tenure, I do not differ with him, but the force of the argument depends entirely upon the fact assumed that the grantees were at the time of such acceptancy by the squatters in possession of the seigniory the *dominium directum* as proprietors, as between themselves and the sovereign power whithin whose territory the pretended seigniory was. If at that time the seigniory of Sault St. Marie had been resumed *de facto* by the government exercising sovereignty over the territory comprising it, and was held under a free tenure, the argument entirely fails of application to this case.

To the ninth interrogatory: It is stated by Mr. Badgley that the seigniory in question, as French colonial territory in Canada, was subject to the law of Canada, her French laws and usages, and also her municipal law from 1760, the date of the conquest, to the date of the treaty between England and the United States in 1783. This is stating broadly what has been denied by many of our most eminent judges. There has been great conflict of opinion upon this point with our judges, arising out of the peculiar and intricate questions that the doctrine that English laws were as a body introduced into Canada at the date of the conquest would give rise to.

There cannot be a doubt, however, that at the date of the proclama-
1083 tion of 1763 it was contemplated that the laws of England were to be the laws of the conquered country, and if the peculiar circumstances of the inhabitants rendered a modification of those laws necessary that statutory provision for this purpose should be made with the view of assimilating the laws and customs (*jus privatum*) in Canada to the laws of England, and whatever may have been the character of the local administration of justice in Canada between 1760 and 1774, the date of the Quebec act, it is plain that the acts of the government of England during this period were based upon the assumption that Canada was subject to the common law of England, and it has never been doubted that the criminal and public law of England was extended to Canada by the facts of conquest and change of sovereignty. I have before presented my views of the effect of the Quebec act. As respects the other reasoning of Mr. Badgley here inquired of, it appears to me to have reference to questions of international law, which, I humbly conceive, are matters to be determined by the tribunal to which this case is to be submitted by the law of nations, which need not be proved. I cannot, however, see what occasion or pertinence there is for referring to the proclamation of 1791, dividing Upper from Lower Canada, as the Sault St. Marie territory passed into the United States in 1783.

1084 To the tenth interrogatory: I cannot see any propriety in my giving evidence as to this answer. It is an argument that the title is good and is proved according to the requirements of the laws of the United States. No question of Canadian law appears to me to be involved in it.

To the eleventh interrogatory: The widow of Gaspard le Gardeur, if her marriage is treated as a marriage in Canada, would not by the laws of Canada, *i. e*, the custom of Paris, inherit real property or any shares of real property of her sons which came to them by descent from their paternal ancestors. Her marriage appears to have been at Guadeloupe. What effect this might have I cannot say, not knowing the laws there. I have already given my views on the matter of alienage. I consider that Louis Repentigny, by his own voluntary act remained and chose to remain an alien to the British government, and his abandonment of the country and the adverse possession by the crown of the seigniory of Sault St. Marie was sufficient, without any judgment in the nature of an escheat to vest the property in them. In fact I should go further and say that after his voluntary abandonment of Canada, and on the expiration of eighteen months given him in the treaty of 1763 to dispose of his real estate, if any he had, "to British subjects," the mere fact of sovereignty vested in the king of Great
1085 Britain the seigniory of Sault St. Marie, so far as he was concerned. Holding this opinion of the law, it is needless labour for me to discourse upon these questions of inheritance based upon suppositious cases.

(Signed) J. S. SANBORN.

To the first cross-interrogatory: I studied law in Montreal with Messrs. A. & G. Robertson, advocates, having prior thereto acquired a classical education and the degrees of A. B. and A. M. in Dartmouth College, in the

United States. I have practiced law in Sherbrooke, Lower Canada, since January, 1847. I have stated in answer to the first interrogatory in chief the means I have had of acquiring a knowledge of the feudal laws of Canada. My practice as advocate has not been in a district where that tenure prevailed, but is under the custom of Paris, and a knowledge of the law of Lower Canada necessitates a study of and comprehension of this law. In order to fit myself to legislate upon it I was under the necessity of making myself intimately acquainted with the origin and peculiar incidents of the seigniorial law of Canada, and I have carefully examined the opinions of the twelve judges to which I have referred. I am able to read and speak
1086 the French language. No lawyer can attain any position in Lower Canada without this acquisition, for our law proceedings are as often in French as English, and our law authorities in matters pertaining to civil rights are in the French language.

To the second cross-interrogatory: I never held any judicial office except as a member of "the high court of parliament." I was seven years in the house of assembly, and was recently elected a member of the legislative council, the higher branch of our Canadian legislature, and I have been recently appointed by her majesty's commission as "one of her majesty's counsellors learned in the law." The Honorable William Badgley is an emiment judge, and well versed in the laws of Lower Canada and the laws of the feudal tenure. I have no advantage over him in any respect. He has the advantage of larger experience over me. His answers are sufficient evidence of his legal attainments if there were no other. It is quite plain that they could not have been given by a novice in the law. As, however, I am somewhat pointedly pressed in this particular, I must observe that his evidence appears to me to savor more of the advocate than the judge, and many of his legal facts are decidedly argumentative.

1087 To the third cross-interrogatory: I never read these interrogatories till they were presented to me to give my evidence upon them. I was aware that Mr. E. T. Brooks, my law partner, was requested by Mr. Russell, counsel for respondents, to assist him in propounding interrogatories to Mr. Badgley, and give him such legal suggestions as he could of the laws of Lower Canada involved in this case. I never investigated the documents nor gave any opinion respecting them; Mr. Brooks investigated the affair alone, and I had no idea of being examined as a witness, and my answers have been prepared at Quebec, and I have not seen Mr. Brooks since I commenced them. Nothing has been said to me about compensation for my time in preparing this evidence. I shall have no objection to receive a fair compensation for it, for it has taken too much time and reflection to be solely a labor of love. I think Mr. Brooks read to me his suggestions to Mr. Russell, but they were the result of his own labor, not mine.

To the fourth cross-interrogatory: I cannot better answer the first part of this interrogatory than to cite the language of Chief Justice Lafontaine, in his elaborated judgment upon the seigniorial questions. "The feudal institution was created in Canada; it is therefore quite natural to pre-
1088 tend that it was from the beginning subjected to the provisions of the custom of Paris in this matter as far as possible, but only insofar as those provisions had not been derogated from by the title introducing the institution itself. The alienation of the fief allowed to the seignior by the custom of Paris is only facultative. The seignior is not under any obligation to alienate. If the charter of 1627-'28 has ordered otherwise, as respects Canada, if our feudal system imposes on the seignior as I believe that I have shewn the obligation to concede, it is evident that there is a difference betweeen the alienation of the fief under the custom of Paris and that of this country; the one is facultative, the other obligatory. It

will be seen by and by that this difference became more marked in proportion as the feudal institution became developed in Canada by means of our special laws, our customs, and wants." The laws of Canada were in an unsettled state from the date of the conquest, 1760, to the date of the Quebec act, 1774. By this act last mentioned, as I have observed in my examination and chief, the inhabitants were secured their old laws as far as concerned the decision of private rights. I have before stated that the criminal law and public law of England extended over Canada from the date of the conquest, and my views respecting alienage and the rights of
1089 the crown as to forfeitures of grant. The local laws of Canada remained in force only till 1792, when the common law of England was introduced into Upper Canada by an act of the parliament of Upper Canada, and of course were in force in Upper Canada at the date of the deed from De Bonne to Caldwell in 1796. I should suppose that after the cession of the territory including Sault St. Marie seigniory to the United States the custom of Paris could not be in force with reference to it there, unless as a fact of foreign law to be invoked and proved to define rights of any parties formerly subject to it. The fifth article of the treaty of 1783 between Great Britain and the United States has a bearing upon this subject. It is a question of international law.

To the fifth cross-interrogatory: I am not at present prepared to say whether the chartered limits of Virginia extended over the *locus* in controversy, as it is too much to expect of me to give historical evidence. If, however, I could imagine that it would be of service, I would verify the facts suggested. As the De Bonne and Repentigny title is not pretended to be derived from an English patent, but a French concession, it appears to me very strange that this question is demanded of me. If the common law of England were in force there one hundred and fifty years prior to the declaration of independence as a part of the limits of the Virginia grant, of
1090 course the jurisdiction of France was excluded and the concession to De Bonne and Repentigny in 1750 mere waste paper.

To the sixth cross-interrogatory: In my answer to the second interrogatory in chief I have explained that the deed from De Bonne to Caldwell did not convey the absolute property for want of tradition. It passed the *jus ad rem*, not the *jus in re*. I cited then an authority in point under Canadian law. I agree, however, with Mr. Badgley that it is the *locus rei sitæ* that determines the validity of these deeds as passing the property, supposing the parties to have the right to convey. As at the dates of their deeds the land was in Michigan. I must decline expressing an opinion upon what would satisfy the law there.

To the seventh cross-interrogatory: I have stated in my answer to the fourth interrogatory all that I can say of what this question is intended to elicit.

To the eighth cross-interrogatory: I am not aware of any such judicial forfeiture of lands lying in Upper Canada for want of performance of the ceremony of foi et homage. Respecting the latter part of this question, I suppose that there would be no inconsistency in the performance of
1091 foi et homage at the castle of St. Louis respecting any seigniory of which the seignior had secured the property (direct domaine) by performance of the essential conditions in good faith, to wit, actual possession and settlement by himself and censitaires, in order to continue his proper status as seignior so long as the territory remained under the British sovereignty, that is, to the date of the treaty of 1783. I have in my answers to the interrogatories in the examination in chief intimated my opinion that if no bona fide acts of settlement were accomplished prior to the change of sovereignty from France to England, the public policy upon which the con-

cession was made had ceased to exist, and the seignior by his own laches had by the fact of the conquest lost his opportunity of performing such conditions, and with it his claim to such seigniory.

To the ninth cross-interrogatory: If I regarded these concessions in the nature of grants like patents from the British governments or chartered rights subject to the rules and spirit of the constitution and common law of England, and such as could not in their nature and original intention be altered and resumed at the will of the sovereign, and as a consequence required a judgment pronouncing their forfeiture for non-fulfilment of the conditions of the grants for their reunion to the crown domain, I should
1092 say that there is no material difference between the language "the concession shall be and remain null" and the language "it shall be reunited to the domain." It is, however, perfectly clear that the kings of France not only claimed but repeatedly exercised the right of resuming and regranting seigniories when the intentions and stipulated conditions of these concessions were not carried out. This is abundantly shewn in the instances cited by Chief Justice Lafontaine in his elaborated judgment before referred to, and I would beg to refer to that judgment contained in the seignorial law reports of Lower Canada as containing a most able and learned disquisition upon many points involved in these questions. My impression upon this point does not militate against Mr. Badgley's view of abstract questions of law, but I do not agree with him in the aptness of its application to this case. The performance of the ceremony of foi et hommage could not be invoked as a substitute for the essential conditions of settlements to prevent an arbitrary resumption of the seigniory by the king of France, and he had no available grievance to complain of if by his own neglect his seigniory was resumed and disposed of anew as an act of governmental policy. When this territory was lost to the French government, if the
1093 seignior had not performed these acts which were necessary under the French government to secure him a vested right when the territory became part of another sovereignty, where a totally different tenure existed, and no such public policy prevailed, instead of this impossibility of his complying with the original conditions of concession, giving him the absolute property, it, as it appears to me, operated the loss of that which by availing himself of the facultative or permissory privileges afforded him in the original grant he might by diligence and good faith have acquired. The sovereign of Great Britain at the conquest and afterwards the United States finding themselves in possession, as a part of the public domain, of the territory of Sault St. Marie, in a wild and wooded state, it devolves upon the claimants to show not merely that there was a concession, but that such concession was accepted by the acts of settlement, which were essential to its vesting property in the grantees. I am happy to find the view I have taken of this question sustained by as good a lawyer as the late William Wirt. When Attorney General of the United States he gave his opinion respecting a Spanish grant, which will be found at large in a volume styled "General and Public Acts of Congress respecting the sale and disposition of the public lands, &c., and Official Opinions of the Attorney General,
1094 &c.," where on pages 41 and 42 will be found the following holdings:

"Held by Attorney General Wm. Wirt respecting a Spanish grant that the settled policy of the king of Spain was to parcel out his colonial domain with reference to the single object of population, and grants for the purpose of speculation were not tolerated. It is competent for the sovereign making the grant only to release the condition on which it was made. Matters in exercise of non-compliance are not the subject of judicial enquiry."

Mr. Wirt in the course of his opinion remarks: "I should think it proper to insist in the answer that the long fixed and settled policy of Spain was to

parcel out her colonial domain with reference to the single object of population, and that policy grant for the purpose of speculation were not tolerated. That the rule which required the settlement to commence in three years did not contemplate a mere formal commencement which should open the land immediately to speculation in the hand of the grantee, but a fair and *bona fide* commencement to be followed up, and completed with all reasonable diligence. You have said in your answer that there was nothing in the circumstances set forth in the petition to absolve Aredondo
1095 and son from compliance with that condition of settlement on which the validity of the grant was to depend. I concur entirely with you in this position. I have added that as the grant itself upon that express condition was the act of a sovereign, it was not a matter for judicial inquiry whether any circumstances had arisen to excuse a compliance with that condition. It was competent only to the sovereign who had imposed the condition to release it, or to excuse a non-compliance with it, and now to the sovereign power of the United States, who have taken under that treaty the place of Spain."

To the tenth cross-interrogatory: I herewith furnish translations of the documents referred to as Exhibits 1, 2, and 3; correct printed copies of these are to be found in the French language in the edicts et ordinances referred to. The arret of 1711 applied as well to grants made afterwards as before its date, and this was so determined by the seigniorial judges, and there is one of the strong proofs that these concessions were part of the administrative policy (l'ordre publique) of France. The other arret of the 6th July, 1711, is produced as translated, Exhibit 5. This arret applied to future as well as past concession. It was a municipal law, to which all seig-
1096 niorial grants were subjected, to which its provisions are applicable from the nature of the contracts of concession. It is unnecessary to answer the remaining questions in this interrogatory otherwise than to say that I conceive Mr. Badgely has given a correct description of the mode of proceeding before the tribunal of the governor and intendant, and that this was the ordinary and legitimate mode of proceeding against persons forfeiting their concessions or grants—that a judgment was obtained after hearing of the parties from which there was a right of appeal. It is, however, necessary to remark, what the querist does not appear to perceive, that the powers given to the intendant were simply judicial, and the powers to reunite any seigniory to the crown domain was not conferred upon him, only the powers to reunite property with the seigniory forfeited by the tenant, while to the governor and intendant jointly were given the delegated powers of the sovereign, and these powers were administrative more than judicial, and this tribunal was constituted to do what the king had before done—as he chose. In order that he might be informed and act en connaissance de cause, the process was of the nature of a trial, but not of a court possessing simply judicial functions. It was because this tribunal composed of the governor and intendant possessed administrative and executive pow-
1097 ers, and were representatives of the king in carrying out the policy of the French government respecting new France, that six of the judges held that the powers of the governor and intendant did not rest in the courts of justice established in Canada after the conquest; those courts possesssing judicial functions only.

To liken this, however, to the court of escheats in England is calculated to lead to very incorrect conclusions. This tribunal united legislative and judicial powers which is a principle quite abhorrent to the English law. It must be borne in mind also that the sovereign power in France was behind this tribunal, not simply as an appeal, but to be arbitrarily exercised, if public policy required it, even to the sweeping away of this tribunal and

the ordaining of what was the royal pleasure in matters of this kind. It is also to be borne in mind that the necessity of this tribunal consisted mainly in the questions arising from the partial performance of the onerous conditions of the grants ont he part of the seigniors, and the failure in some parts. The position taken by me is that where there has been no residence feu et lieu on the part of the grantee, and no settlement, subinfeudation, which is the natural sequitur of residence by the seignior in the locus when the grant is made, there is no acceptance, and the seigniory has never passed from the crown. I have before explained my views upon this point,
1098 and the grounds upon which they are based, and I need not extend them here. The result of my reasoning is that the adverse possession of the British government and American government of the land in question for a hundred years renders it necessary for the claimant to establish that the grantees or their ayans cause performed the obligations imposed as motives and conditions of the grant, and if these were not performed prior to the conquest, their property was lost. The facultative or permissory right not having been accepted by actual appropriation, it became incurably lapsed by the impossibility of its acceptance after that date, and the judgment of forfeiture being in fact but a question of form, not of right, can as well be pronounced now in the adjudication of this claim as at any previous date, or upon an issue provoked by either of the governments exercising rights of possession and property in the land in question. It is a point susceptible of argument, and I have given the conclusion to which my own reflection upon the facts and the principles of law applicable to them has led me.

To the eleventh cross-interrogatory: I have stated that I have considered the *locus* within British Territory *de facto* up to the treaty of 1783, but no longer; but I should suppose that if the grantees or claimants through
1099 them have rights of property in the land in question, those rights would be necessarily modified and affected by the nature and extent of those rights under the laws in force at the time of their inception. I know nothing personally of the facts assumed in 1, 2, 3, and 4, in direct interrogatory No. 6.

To twelfth cross-interrogatory: It is my opinion that the second paragraph, as well as the whole of the arret of 1732, is inapplicable to the fief in question, inasmuch as this arret was a part of the municipal law established by the king, to which past as well as future concessions were subject in all particulars, in which their circumstances made the rules or law as then defined applicable. The third paragraph of the arret of 1732, prohibiting the sale of wood lands, is not, as this question seems to contemplate, inconsistent, but quite in harmony with the second paragraph. The prohibition to sell wood lands was to enforce subconcession, to effect settlement, to insure the seigniory's being ("mis en valeur") rendered valuable by actual settlement, holding there hearth and home "feu et lieu," and by conceding to whomever should apply a certain specified quantity of the seigniory without exacting any sum of money for so doing to be held a titre de redevance on payment of the usual seigniorials rents and dues, and to be husbanded in good
1100 faith. Selling wood lands in contravention of this arret was in fact the same as failing to concede the lands to applicants, and failing to improve and cultivate and settle the seigniory, and of course fell within the provisions of the arrets of 17th July, 1843, which made no new law, but provided one tribunal to the exclusion of all others for exercising the delegated powers of the sovereign to make concessions and effect reunions from and to the crown. It will be noticed in corroboration of what I have before said, the governor and intendant had the power to concede as well as to annul concessions. This will be seen at once to be solely an administra-

tive, not a judicial function. The term "de plein droit" I understand to imply an absolute forfeiture by the occurence of the failures therein specified. The tribunal constituted to declare that forfeiture was the governor and intendant. By the forfeiture, however, I understand the right to be lost, and that if the crown resumed a seigniory without judgment of forfeiture, the party from whom it was taken could claim it back only upon controverting the assumed facts of failure to perform the essential conditions of the grant on his part, whereby the crown assumed the seigniors. The mere want of the formal declaration of forfeiture by a judgment would not avail him, because the claim, to be reinstated in the possession of the seigniory as his property, devolved upon him the necessity of showing
1101 that a forfeiture has not been incurred, or in other words invoked an issue as to the existence of the facts occasioning the forfeiture, and these being proved, the judgment upon his claim must necessarily be a declaration that his grant had been forfeited, and the crown, by reason thereof, had rightfully resumed the seigniory.

With regard to the information sought by the remaining portions of this interrogatory and the mode adopted by the French kings Louis XIV, XV, XVI, it is impossible for me to devote time enough to this matter to procure and translate all the documents sought, but the reports to which I have referred, the seigniorial law reports of Canada, A and B, which I hereby declare to be and contain the opinions of our superior and queen's bench judges, and having the highest authority, contain numerous citations of the proceedings of the French kings and such an elucidation of this whole subject as will enable foreign law judges to determine whether the conclusions to which I have arrived are just or not. The questions and answers 21 and 23 submitted to and answered by the judges of the seigniorial court have been cited *verbatim* in my evidence in chief.

In answer to the question, "in what manner and at what time was the common law of England introduced into Upper Canada?" I have to
1102 say that by the imperial act of 1791, Geo. III, c. XXXI, the province of Canada was divided into two provinces, namely Upper Canada and Lower Canada. By said act a legislature was constituted in Upper Canada having power "to make laws for the peace, welfare, and good government thereof," and by said constitutional act the laws in force remained in force except so far as repealed by that act "or in so far as the same should or might thereafter by virtue of and under the authority of that act be repealed or varied by his majesty, his heirs, or successors, by and with the advice and consent of the legislative councils and assemblies of the said province respectively."

By act of the parliament of Upper Canada, passed in 1792, it was enacted that "in all matters of controversy relative to property and civil rights resort shall continue to be had to the laws of England as they stood on the fifteenth day of October, one thousand seven hundred and ninety-two, as the rule for the decision of the same." English rules of evidence were also introduced. It is noticeable here that this law is not introductory in its terms. "Resort shall continue to be had," &c., assumes it to be still regarded as the law by virtue of the conquest, treaty, and proclamation following the treaty. Respecting this proclamation I have already expressed my views in my examination in chief. I have in my answers to the questions
1103 in chief given my views, and the reasons for them, of the bearing of the Chevalier Repentigny being an alien. I cannot see how it can at all effect his disabilities as an alien, that the *locus* in question was claimed in 1778, as within the charter of Virginia. If he had title at all it is derived originally from the French government, and if he lost his claim by reason of alienage it was by reason of his choosing to remain a subject of

France, and making no claim and securing no right to this seigniory within eighteen months after the treaty between France and England in 1763, which was some fourteen years prior to 1778. The acquisition of sovereignty over the *locus* in question, even suppose it to have been in 1778, could not revive a claim which was lost fourteen years before, while the *locus* unquestionably was within the British dominions.

Upon the remaining portions of this interrogatory I have given my opinions and cited such authority as I am aware of in support of it. I do hold that the fourth article of the treaty of the 10th February, 1763, required all French inhabitants in Canada who retired from Canada within 18 months to sell their estates to British subjects, and that in default of such sale their estates became forfeited to the crown of Great Britain. I hold, as I have stated, that the fact of such departure and refusal to become
1104 subjects without disposing of their real property, if any they had, was an abandonment thereof to the crown of England, and so far as they were concerned there was no necessity of a declaration or judgment of forfeiture. The crown became seized of it by the effect of the treaty stipulation, and further, because the *status* of a subject was absolutely necessary for them to hold real property en seigniorie from the crown. Holding this I cannot admit that it could afterwards be inherited by their descendants.

To the thirteenth cross-interrogatory: I cannot say anything of importance to this interrogatory. The evidence of Mr. Bouchette, which has been shown me, shows what was the nature of these maps. They are evidently of a very general and vague character, and it is noticeable in Mr. Bouchette's evidence, who is at the head of the survey department of the province, that these maps are not known to the government and are not documents in the custody of the crown lands department, where they ought to be found to be claimed as authoritative.

To the fourteenth cross-interrogatory: I cannot add to what I have said in my examination in chief upon the matters inquired of this interrogatory. I must therefore refer to my remarks respecting prescription under the 113th and 118th articles of the customs of Paris.

1105 To the fifteenth cross-interrogatory: I have already said all that I can upon these subjects as to the law of England. I have only spoken as to the public and municipal law. The opinion respecting prescription or acquisition of property by adverse possession, is my opinion of the law as it exists under the custom of Paris. My views respecting the grant in question are based upon the peculiar nature of the grants; and as the rights, if any there be, in the case presented must have their inception under the French regime, I consider that they can only be properly determined upon principles recognized by the government where they originated and if in following the subject into all the tortuous paths through which these interrogatories have led, I have not become bewildered and confounded, I shall feel satisfied.

(Signed) J. S. SANBORN.

Sworn, taken, and acknowledged at the town of Sherbrooke, in the province of Canada, the twelfth day of October, one thousand eight hundred and sixty-three, before me.

(Signed) LIVINGSTON E. MORRIS, *Commissioner.*

I, the undersigned, commissioner, certify that the foregoing deposition of the Honorable John S. Sanborn, was written by J. A. Walsh, a clerk
1106 employed by me for that purpose, and that it was made, signed, and taken by the said John S. Sanborn in my presence, and before proceeding to testify he took the oath mentioned in the commission hereto attached.

Dated at the town of Sherbrooke, in the province of Canada, this twelfth day of October, one thousand eight hundred and sixty-three.

[L. S.] (Signed) LIVINGSTON E. MORRIS, *Commissioner.*

1107 EXHIBIT I.

Arret de Marly, 6th July, 1711, (No. 1.)

Decree of the king directing that the lands which have been conceded be brought into cultivation and occupied by inhabitants.

The king being informed that among the tracts of land which his majesty has been pleased to grant and concede in seigniory to his subjects in New France, there are some which have not been entirely settled and others on which there are as yet no settlers to bring them into a state of cultivation and on which also those to whom they have been conceded have not yet commenced to make clearings for the purpose of establishing their dominion therein. And his majesty being also informed that there are some seigniors who refuse, under various pretexts, to concede lands to settlers who apply to them with the hope of being able to sell the same, and at the same time impose upon the purchasers the same dues as are paid by the inhabitants already settled on lands, which is entirely contrary to his majesty's intentions, and to the clauses and conditions of the concessions by which they are merely permitted to concede lands at an annual ground rent, whereby very great detriment is done to the new settlers, who find less land open to settlement in the places best adapted to commerce. For remedy whereof his majesty, being in council, has ordained and ordains that within one
1108 year, at the farthest, from the day on which the present decree shall be published, the inhabitants of New France, to whom his majesty has granted lands in seigniory, who have no domain cleared and who have no settlers on their grants, shall be held to bring them into cultivation, and to place settlers thereon, in default of which it is his majesty's will that the said lands be reunited to his domain after the lapse of the said period, at the diligence of the attorney general of the superior council of Quebec, and on the orders to be given in that behalf by the governor and lieutenant general of his majesty and the intendant of the said country. And his majesty ordains also that all the seigniors in the said country of New France shall concede to the settlers the lots of land which they may demand of them in their seigniories at a ground rent, and without exacting from them any sum of money as a consideration for such concession; otherwise, and in default of their so doing, his majesty permits the same settlers to demand the said lots of lands from them by a formal summons, and in case of their refusal, to make application to the governor and lieutenant general and intendant of the said country, whom his majesty enjoins to concede to the said settlers the lands demanded by them in the said seigniories, for the same dues as are laid upon the other conceded lands in the said seigniories, which dues shall be paid by the new settlers into the hands of the receiver of his ma-
1109 jesty's domain in the city of Quebec, without its being in the power of the seigniors to claim therefrom any dues of any kind whatsoever.

And this decree shall be registered in the registry of the superior council of Quebec, and read and published wherever need shall be.

Done in the king's council of state, held at Marly, his majesty being present, the 6th day of July, 1711.

(Signed) PHELIPPEAUX.

1110 EXHIBIT II.

Arret of March 15, 1732.

Decree of the king's council requiring seigniors to make their tenants to reside upon their seigniories, and prohibiting them from selling wood lands, (terres en bois debout,) of the 15th March, 1732.—Extract from the register of the king's council.

The king having caused the production before him, in his council, of the decree rendered therein of the 6th July, 1717, (query, 1711,) ordering the inhabitants of New France, to whom lands or fiefs have been granted, and who have not yet cleared any portion thereof as a domain, nor caused the inhabitants to settle therein, should be held to put them in a state of cultivation, and to place settlers thereon within a year from the publication of the same decree, after the expiration of which delay such fiefs should be reunited to the domain of his majesty, and that the said seigniors should also be held to concede to the inhabitants demanding them, subject to the usual seigniorial dues, (a titre de redevances,) and without exacting any sum of money, in default whereof the said inhabitants, in case of a refusal on the part of the seigniors after demand to that effect, are permitted to apply to the governor and lieutenant general and intendent of the said country to obtain concessions of such lands, subject to the dues imposed upon the lands already conceded, which dues should be paid to the receiver of the domain of his majesty, without the seigniors being allowed to claim anything
1111 upon the lands so conceded, and another decree of the same date, 6th July, 1711, ordering that the tenants of lands en roture should be held to reside thereon tenir feu et lieu, and to put them in a state of cultivation within a year from the day of publication, on pain of reunion to the domain of the seigniors, by virtue of the ordinances of the intendant.

And his majesty being informed that in contravention to those two decrees there are seigniors who have reserved to themselves in their seigniories, extensive domains, which they sell as wood lands, instead of conceding them merely subject to the usual seigniorial dues, (a titre de redevances,) and that inhabitants who have obtained concessions of lands from the seigniors sell those lands to others who do as much, which gives rise to a system of bartering contrary to the welfare of the colony; and it being necessary to put a stop to abuses so prejudicial, his majesty, sitting in council, has ordained, and doth ordain, that within two years from the day of the publication of the present decree, all proprietors of seigniories not yet in a state of cultivation shall be held to put them in a state of cultivation, and to locate as habitants thereon; in default whereof, and after the expiration of such delay, the said seigniories shall be reunited to the domain of his majesty by virtue of the present decree, and without any other proceeding being required, his majesty expressly prohibiting all seigniors or
1112 other proprietors from selling any wood land, on pain of nullity of deed of sale, and of restitution of the price of land sold as aforesaid, which lands shall in the same manner be reunited by force of law to the domain of his majesty. And furthermore, the said two decrees of the 6th July, 1711, shall be executed according to their tenor and effect, and the present decree shall be registered in the registry office of the superior council of Quebec, and shall be read and published wherever it will be necessary.

Done in the king's council, in presence of his majesty, at Versailles, the 15th March, 1732.

(Signed) PHELIPPEAUX.

Registered at the request of the king's attorney general, in conformity

with a decree rendered this day by us, councillor, king's secretary, and chief clerk of the superior council.

Quebec, 4th September, 1732.

(Signed) DAINE.

1113 EXHIBIT III.

Decree of Louis 15th, July 17, 1743.

Declaration of the king concerning concessions in the colonies.

Louis, by the grace of God king of France and Navarre, to all to whom these presents shall come, greeting:

Following the example of the kings, our predecessors, we have authorized the governors and intendants of our colonies of America, not only to make of their own authority concessions of lands to such of our subjects as are desirous of making settlements therein, but also to reunite to our domaine the conceded lands which are subject to such reunion by reason of their not having been put in a state of cultivation, and they are also authorized, in preference to the ordinary judges, to hear and determine all contestations arising between grantees (concessionnaires) or their assigns, as well in relation to the validity and to the execution of their concessions as in relation to their position, the extent of their grants, and the boundaries thereof. Having been informed that there has been until now nothing certain either in the manner of proceeding to the reunion of concessions, or in the manner of proceeding and adjudicating in contestations arising between grantees or their assigns, and in the proceedings to be adopted to obtain redress against the ordinances rendered in the matter by the governors and intendants, so much so that different usages have been introduced in the several colonies, and even frequently in one and the same colony, in order to put an end to this
1114 uncertainty in matters so interesting to the peace and tranquillity of families, we have resolved to establish by precise enactments fixed and invariable rules, to be followed in all the colonies, as well in the manner of proceeding to the reunion of lands to our domain, when such reunion ought to take place, and to the hearing and trial of contestations arising therefrom, as in the mode of redress required by those who think they have been wronged by the judgments that may have been rendered.

For these and other reasons, us thereunto moving, with the advice of our council, and of our certain knowledge, full power and royal authority we have declared and ordained, and by these presents, under our seal, we do hereby declare and ordain, will, and it is our pleasure, as follows, to wit:

ARTICLE I. The governors, lieutenants general, and the intendants in our colonies, or the officers representing them, when such are unable to act or are absent from the colony, shall continue jointly to concede lands to the inhabitants who will be willing to have them, to put them in a state of cultivation, and shall grant them titles under the usual terms and conditions.

II. They shall proceed in the same manner to reunite to our domain
1115 the lands which are subject to such reunion, at the request of our attorneys in the ordinary jurisdictions within which such lands shall be situate.

III. They shall not concede lands already conceded, though they are subject to be reunited to the domain, until such reunion has been ordered and effected, on pain of nullity of such new concessions, without prejudice, nevertheless, to such reunion, which may always be ordered against the first grantee.

IV. The governors, lieutenants general, and intendants in our colonies, or the officers representing them, when unable to act, or when absent from

the colonies, shall continue to hear, to the exclusion of the judges of the ordinary tribunals, all contestations arising between grantees or their assigns, as well in relation to the validity and execution of concessions as in relation to the position, extent, and boundaries of their grants; and in case minors should be concerned in such contestations the latter shall be communicated to our attorneys before the ordinary tribunals, but they may act in the matter as if such contestations had been brought before the said jurisdictions. In the provisions of this article shall be comprised, however, contestations arising out of partitions between co-heirs, which contestations shall continue to be carried on before the judges of such ordinary tribunals.

1116 V. We do hereby declare null and void all and every concession which shall not be made jointly by the governor and intendant, or by the officers representing them respectively, as also the reunions which shall not be ordered, and the judgments which shall be rendered by them jointly, or by their representatives. We, however, authorize one of them, in case of death of the other, or of his absence from the colony, and in case there are no officers to represent the one who shall have died or will be absent, to make alone concessions of land, to proceed to the reunions to our domain, and to render judgments in the contestations arising between grantees, after calling to the rendering of such judgments such officers of the superior council, or of the jurisdiction, as he may think fit to call; and he shall be obliged to mention, as well in the deed of concessions as in the reunions, and in the judgments upon such contestations, the reasons which have compelled him to proceed in such manner, upon pain of the nullity of such proceedings.

VI. In cases where the governors and intendants shall be of a different opinion upon the demands made to them of concessions of lands, we require them not to grant the titles of such concessions until we have given

1117 them our orders upon the report they shall make to us of their several opinions, and in case of a division of opinion between them in relation to reunions to the domain, or in relation to the judgments to be rendered in contestations between grantees of lands, it will be their duty to call to such proceedings the oldest officer of the superior court, or in his absence, or in case of any impediment, the next oldest officer on the list, the whole without prejudice to the casting vote of the governors in matters concerning our service wherein it ought to prevail.

VII. In matters wherein an examination of the places in contestations shall be ordered, or wherein experts shall be appointed, and shall make reports, the provisions contained in the 21st and 22d articles of the ordinance of 1667 in that respect shall be adhered to, on pain of nullity.

VIII. The parties may appeal before our council from the judgments rendered by the governors and intendants, in relation to contestations between individuals, and to reunions to the domain. The said appeal may be instituted by a mere declaration, and the petitions presented in consequence shall be delivered with the documents filed by parties in the hands of the secretary of state for the marine service, to be determined by us upon the re-

1118 turn of the same by such officer in our council.

We do hereby require our trusty and well beloved, the members of our superior council of Canada, to cause these presents to be read, published, and registered, and the contents thereof to keep and observe, and cause to be executed according to their tenor and effect, all edicts, declarations, decrees, ordinances, and regulations to the contrary notwithstanding, to which we have derogated, and we do hereby derogate, for such is our pleasure.

In testimony whereof, we have caused our seal to be thereunto affixed.

Done at Versailles, on the seventeenth day of July, in the year of our Lord

one thousand seven hundred and forty-three, and of our reign the twenty-eighth.

(Signed) LOUIS.

And further down, by the king's command.

(Signed) PHELIPPEAUX.

Exhibit IV.—None.

1119 EXHIBIT 5.

Arret de Marly, 6th July, 1711 (No. 2.)

Decree of the king, which deprives the inhabitants of their rights to the lands conceded to them, unless they are rendered valuable by their residing on them within one year and a day after the publication of this decree.

The king being informed that there are lands conceded to the inhabitants of New France which are neither inhabited nor cleared, but only few trees felled on them by these settlers, who thereby and by means of the grants which they have received of these lands from those to whom his majesty has conceded them in seigniory believe to secure to themselves the possession thereof, thereby preventing their being conceded to others, more laborious settlers, who could hold or cultivate them to the great prejudice of the other inhabitants settled in these seigniories, because by their not being settled on or cultivating their lands they do not do any public works which are prescribed for the good of the country and of said seigniories contrary to the intention of his majesty in allowing these grants in order to settle the country, and on condition that these lands should be settled upon and cultivated. And it being necessary to provide against such abuses, his majesty being in council, has ordained and ordains that within one year
1120 at the farthest from the day on which the present decree shall be published the inhabitants of New France who are not settled on the lands conceded to them will be held to reside thereon, tenir feu et lieu, and to cultivate them; in default of which, it is the will of his majesty that, after the lapse of the said period, on the certificates of the parsons and of the captains of militia (capitaines de la cote) to the effect that the said inhabitants shall have been a year without residing on their lands and without cultivating them, they be deprived of their rights to the said lands, and that these should be reunited to the domain of the seigniories on the order of M. Begon, intendant in the said country of New France, to whom his majesty trusts the execution of the present decree, and orders him to register the same in the registry office of the superior council, and read and publish the same wherever need shall be, to the end that no one pleads ignorance to it.

Done in the king's council of state, held at Marly, his majesty being present, this 6th day of July, 1711.

(Signed) PHELYPEAUX.

1123 QUEBEC DEPOSITIONS.—Filed 29th October, 1863.

Direct interrogatories on the part of the respondents.

First. What is your name, age, residence and vocation; and what have been your opportunities for becoming acquainted with the principles of surveying and laying off public grants of lands in conformity with the descriptions thereof contained in grants from the crown; and especially for

becoming acquainted with the rules which govern the "bornage" of
1124 seigneuries under grants from the crown of France dated in or about 1750 and 1751?

Second. Look upon the petition in this matter. Do you understand the Frence language? Read the provincial grant of 1750, (pages 1, 2,) and the confirmation of the same, dated 1751, (pages 2 and 3.) Read the French colonial ordinance of 1626, respecting the bornage of seigneuries, and having regard thereto if in force in 1751, and to the other rules for the laying off of such grants, and which were in force in 1751. Describe and draw, and annex to this your deposition the figure of the superficies which, in your opinion, the signeury purporting to be so granted ought to have, and say whether or not you can affirm the said figure to be the necessary and only proper figure to be formed by the boundary lines of such seigneury, if laid down consistently with the description thereof in said grant and confirmation, and with the said rules in force in 1751. Assuming the said seigneury to be exclusively on the south or United States side of the St. Mary River, and assuming the centre of the portage to be the centre of its front, and is it or not the fact that several other figures might be drawn varying according to the line which in the views of various persons might be assumed to be the "general course line" of the river, and all of which figures might reasonably be held to be as consistent with, and as much necessi-
1125 tated by, the said description as the figure so drawn by you. Explain the principles upon which you have drawn the said figure.

Third. Look upon the paper writing purporting to be a copy or tracing of a certain map signed "Franquet" at foot, and marked Exhibit A. What can you say, from your knowledge of Canadian topography, history, and records, or otherwise, concerning the accuracy of the maps of Canadian seigneuries made by Franquet, the military engineer of Louis XV? Do you, or not, believe that he surveyed or caused to be surveyed the seigneuries in each case by actual measurement? or in any other and what special manner as regards each seigneury, or rather that for mere military purposes connected with the general defence of the frontier he laid the boundaries down roughly and by guess, not with a view of defining its boundaries for civil purposes, but to show the general position of the seigneury? What other than the words of the grants do you believe to have been his authority for the location of the boundary lines of seigneuries in the maps which bear his name, and especially in the present instance, when the description of the boundaries in the grant and confirmation of 1750 and
1126 1751 is uncertain by reason of its not specifying the point at which the "frontage" therein referred to begins or ends? What do you suppose to have been his authority for the location of the west and south boundary lines? and herein have regard to the fact that the words of the grant purport to pass a seigneury with a water front of six leagues; whereas the figure of the seigneury given in said map presents a water front of, in, or about twelve leagues upon the river. What was to the best of your knowledge the ancient practice of the French crown in fixing the boundaries of seigneuries? Were or were not the "calls" or descriptions of the parcels usually vague and incapable of definite location in view of their being afterwards defined accurately by an official survey duly returned and recorded? and in what office were such official surveys, if any, recorded? and where should they now exist?

(Signed) ALFRED RUSSELL, *U. S. Dist. Att'y.*

The foregoing direct interrogatories are settled by consent, subject to

objection on the ground of competency or relevancy, as are also the answers of the witness.

Sept. 25, 1863.

(Signed) J. M. HOWARD, *Sol. for Petitioners.*
(Signed) ALFRED RUSSELL, *U. S. Dist. Att'y.*

1127 *Cross-interrogatories on the part of the said petitioners.*

First cross-interrogatory. Have you studied the principles of land surveying? and if you have actually practiced that art please state where and for what period of time.

Second cross-interrogatory. Have you studied and practiced the profession of the law? and if so, where, and for what period of time?

Third. Please furnish a true copy of the "colonial ordinance" of 1626, respecting the bornage of seigniories referred to in the 2nd direct interrogatory in the original French; or, if it be contained in the printed work known as "Edits and Ordonnances," printed at Quebec under a resolution of the legislative assembly of June 8th, 1853, please refer to the volume and page, without furnishing the copy; and state whether said ordinance respecting the bornage has ever been repealed, annulled, or modified; and if so, when, and in what manner.

Fourth. Have you in drawing the figure called for in said 2nd interrogatory assumed the centre of the portage to be the centre of the front of the seigniory.

Fifth. If yea, please say particularly in what way and upon what
1128 principles, or data or assumptions, you found or assumed that centre, and at what point or place you make the portage begin, and at what end. Set forth the evidence and the facts which have governed you.

Sixth. In case you should not assume that centre to be the centre of the front of the seigniory, what effect would the absence of this assumption have upon your figure?

Seventh. Assuming that the portage commenced on the river bank, a hundred rods or so below the falls, and passed thence at various and irregular distances from the water's edge to a point on the river bank 200 rods or so above the head of the falls, thus leaving a tract of some hundreds of acres lying between the line of the portage and the water line, and keeping in mind the language of the grant, that the "place" granted has 6 leagues of front upon or along the portage, by or upon 6 leagues of depth, bordering (*i. e.*, the place granted) bordering on the river—upon what principle is it that you fix your starting point in the centre of the portage in order to lay off 6 leagues in depth?

Eighth. On the hypothesis that the intention of the grant in this case was that the northern and eastern sides or boundaries of the tract should bothbeon the River St. Mary ("bordant la riviere,") what other meaning or effect can you give to the word "front" in the concession and ratification than that the tract "looked" towards the north, or that the northern side of it was understood to be the "front," and the southern side the
1129 rear? And if you answer in the affirmative, what other meaning or effect can you give the words "sur le portage" but that the portage was in or along the northern part of the tract and near the river? Does not the preposition "sur" sometimes have in French merely the force and effect of "near," or "about," or "towards," in English? If you answer that it has, and that the effect of the expression "sur le portage" was merely to indicate that the portage was in the northern or front part of the tract, how can you make any use whatever of that expression in fixing a starting point for running out the boundaries?

Ninth. Why, in your opinion, was the portage referred to at all in said concession and ratification?

Tenth. How would you ascertain the width of the front—by a straight line running from east to west, or by a crooked line following the sinuosities of the river bank; and if in the latter mode, what meaning and effect do you give to the expression "six lieues de front sur le portage?"

Eleventh. Would you not, in ascertaining the distance across the front, begin at a point on the river and run in a straight line?

Twelfth. State, if you are able, what construction the Canadian government or courts have given to the French word "front" as applied to
1130 tracts of land fronting on bodies of water or watercourses, and whether they have construed it as defining the water line or shore in its crooked course or as indicating the width of the tract measured by a straight line.

Thirteenth. What do you understand to be meant by the expression used in the 2d direct interrogatory "the general course line of the river?" Explain your understanding of it with precision, and state and set forth with exactness how "several other figures might be drawn varying according to the line which in the views of various persons might be assumed to be the general course line of the river."

Fourteenth. If you have answered what your idea of the "general course line of the river is," please state in what way and upon what principles or assumptions or facts can another person or several other persons conceive of other and different "general course lines" of the same river, and what such different general course lines are or may be. Describe each particularly.

Fifteenth. Have you not, by the respondent's counsel or some one else, been furnished or shown a plan, diagram, or tracing of the boundaries of of this tract, based upon such variant hypotheses or views; and if so, who showed or sent it to you? Where is it? And if it is in your possession or control, you are required to annex the same as an exhibit to your deposition.

Sixteenth. Are not said Franquet's maps regarded in Canada as
1131 official maps, made under the authority of the French crown; and have you any historical knowledge that his maps of seigniories in Canada were ever treated as unofficial and unauthorized by the French or Canadian governments? If so, please state in what cases and by whom.

Seventeenth. If you have answered that it is your belief that in his surveys of Canadian seigniories Franquet laid down their boundaries "roughly and by guess," not with a view of defining the boundaries for civil purposes (as is assumed in the first paragraph of the third interrogatory,) please state the particular facts on which you found that belief; and is there any reason why he should have neglected to be accurate in reference to such purposes? If so, please set it forth.

Eighteenth. If, in reply to the 2d paragraph of the 3d direct interrogatory, you have stated what "you suppose to have been his authority for the location of the west and south boundary lines" of this seigniory, please state whether, if you were required now to survey out said tract in accordance with the intention of the grant, you would not start from a point on the river bank through which a north and south line would cut the river in such manner as to give the grantees as nearly as practicable a quantity of land in the southeast part of the tract, between this north and south line and
1132 the river, equal to what they would lose to the north of that point by the river running in a southeasterly direction from the falls, then run a line from that point west 6 leagues, and then a north and south line, commencing on the river bank and running south 6 leagues through the west end of said east and west line; and state whether in your opinion this would not be a fair and just mode of surveying out the tract.

Nineteenth. How, but by measuring along the meanderings of the bank or water line of the River St. Mary, can it be made out that (as I assumed in the second paragraph of this 3d interrogatory) the figure of the seigniory given in said Franquet map, shown you, "presents a water front of in or about twelve leagues upon the river ?"

Twentieth. If, in answer to the 3d paragraph of said 3d direct interrogatory, you have said that the calls or descriptions in the ancient French grants in Canada were generally "vague and incapable of definite location, in view of their being afterwards defined accurately by an official survey," please state whether, after such survey had been made under the authority of the government, the boundaries were not and are not still considered as fixed and settled by such survey so far as the government is concerned, and whether such survey of the tract in question, made the next year after the issuing of the brevet of ratification, is not to be considered binding upon the French government.

Detroit, September 25th, 1863.

(Signed) J. M. HOWARD, *Sol'r for pet'rs.*

1133 The above cross-interrogatories are allowed by consent, subject to objection on the ground of competency or relevancy to the questions and to the answers.

(Signed) J. M. HOWARD, *Sol. for Pet'rs.*
(Signed) ALFRED RUSSELL, *U. S. Dist. Att'y.*

1134 Edward Taylor Fletcher, having first taken the oath mentioned in the foregoing commission, testifies as follows, viz:

To the first direct interrogatory he says: My name is Edward Taylor Fletcher; my age is forty years; my residence, the city of Quebec; and my vocation, senior surveyor in the department of crown lands. I am also member of the board appointed under the provincial statute fourteenth and fifteenth Victoria, chapter four, for the examination of Lower Canada surveyors. I have conducted several surveys under the instructions of government in both sections of the province. In the year one thousand eight hundred and fifty-eight and during the two following years, I was officially employed as surveyor in determining and laying out on the ground the line of division between Upper and Lower Canada, an operation affecting the titles and delineation of the seigniories of New Longueuil and Rigaud. I have also, as inspector of surveys for Canada East, inspected and examined various surveys in different parts of the country in the course of the present year and during the year one thousand eight hundred and sixty-one, several of the tracts surveyed being conterminous with seigniorial lands.

1135 To the second direct interrogatory he says: I understand the French language; I have been employed as translator in the legislative assembly. I have read over the provincial grant of one thousand seven hundred and fifty, contained in the first page of the petition now shown to me; also the confirmation of the same, dated the following year, contained in the second and third pages of the said petition. I am not aware of any French colonial ordinance of one thousand six hundred and twenty-six respecting the bornage of seigniories. The ordinances chiefly referred to in the bornage of seigniories are the twenty-eighth section of the "Reglemens generaux pour la police," of date one thousand six hundred and seventy-six, and the arret of the fifth October, one thousand seven hundred and twenty-two, both published in the second volume of the "Edits et Ordonnances," (pages one hundred and fifty-five and one hundred and eighty-nine.) The first of these relates to concessions on the River Saint Lawrence; the second to those on the River Ottowa and Lake of Two Mountains. Neither of these, how-

ever, would be strictly applicable in the present instance. But the intention or spirit of the several regulations relating to the side lines of land granted "en fief" evidently was that these side lines should be as nearly as practica-
1136 ble perpendicular to the river on which they fronted. Thus Messieurs de Beauharnois and Hocquart, it appears, in a communication addressed to the French minister, and dated the sixth October, one thousand seven hundred and thirty-four, remark, "It is proper that the depth of seigniories should be nearly perpendicular to the front, as well for the facility of surveying as in order to multiply the grants on the same river." Having respect, therefore, to the rules and usages observed in such matters, and to the particular circumstances of the present case, I should, in laying out the seigniory in question, commence by ascertaining with precision the shore line of the river with its bends and sinuosities, both on the north and east side of the tract so granted "en fief." Then, having regard to the terms of the concession, as ratified, which determine the portage side of the fief to be the front and direct that the fief shall border or lie along the river, and also to the general configuration of the river shore, which has an east and west direction on the north side, thus established as the front, and a nearly north and south direction on the east side. I should establish and determine a north and south line on the east side of the fief, so fixed in position as to be what is commonly called a "give-and-take line;" that is, one which would include as much water as it would exclude land. I would then establish the western lateral line of the fief so as to be six leagues due west of this
1137 give-and-take line, thus giving the perpendicular breadth required. The south or depth line would be determined in a similar way by taking into consideration the sinuous course of the front shore line and drawing a straight east and west line at the mean distance of six leagues therefrom. The tract inclosed would thus contain thirty-six square leagues, as required, having a natural river boundary to the north and east, and being bounded to the west and south by two straight lines at right angles to each other, and so posited as to include the required area. I do not see how any other figure could be drawn so as to fulfil the required conditions or be consistent with the terms of the description contained in the grant as ratified.

To the third direct interrogatory he says: The paper now shown to me purports to be a copy or tracing of a certain map signed "Franquet" at foot, and is marked "Exhibit A." I know nothing of the accuracy of the maps of Canadian seigniories made by Franquet, the military engineer of Louis Quinze. On referring to the Canadian archives, I find that the Marquis de Montcalm, in a document annexed to his dispatch of the eighteenth September, one thousand seven hundred and fifty-seven, speaks favora-
1138 bly of Franquet's good sense and experience. I do not believe that he surveyed or caused to be serveyed the seigniories in each case. Such does not appear to have been the usage. The greater part of the seigniories were not surveyed till after the treaty of Paris, in one thousand seven hundred and sixty-three. It was not obligatory on the seignior to have his fief surveyed immediately on receiving a grant of the same, and such survey frequently took place, only long afterwards, either when called upon by the neighboring feudatory to co-operate in establishing the common lateral line of their seigniories, or required by the crown to take part in delimiting the rear or depth line of their fiefs, to divide them from the lands of the crown. The "papier terrier" which each seignior was called upon to furnish was a list of the censitaires of his seigniory, showing the number and designation of each "terre" or lot of land which the latter severally held, and, having relation solely to the internal subdivision of the fief, it contained nothing of necessity binding or authoritative as to its outlines. On looking at the tracing of

Franquet's map, now shown to me, I observe that the seigniory as there laid down appears to correspond in configuration with what I have above stated to be in my opinion the only figure consistent with the terms of the grant.

1139 I cannot say what other authority than the words of the grant Franquet had for the location of the boundary lines of seigniories in other maps which bear his name. In the present instance, it is true that the grant and confirmation do not specify the point at which the frontage therein referred to begins or ends; but there are also many other seigniorial concessions which do not specify the starting point of measurement and do not contain the words "a prendre depuis,"-"a commencer a," or other equivalent expressions, leaving apparently the outlines of the grant to be determined by inference in another way and from other considerations. I suppose that Franquet, in laying down on his map the west and south boundary lines of the tract in question, had regard to the data already alluded to, as, first, the front on the portage side; secondly, the mean course or general direction of the river on that side, east and west, thus necessitating, thirdly, a north and south line for the west boundary; and, fourthly, an area of thirty-six square leagues, or six leagues by six leagues mean, to be contained between the river on the north and east, an east and west line on the south, and a north and south line on the west.

1140 I should look upon the implied superficies of thirty-six square leagues, as set forth in the grant and confirmation, as being an important datum in the construction of the figure. The area has, I believe, been always held to be a primary consideration in laying out seigniorial grants, and a claim for deficiency in this respect, has generally been considered valid. I have understood that in the case of the seigniories of Beauharnois and Saint Hyacinthe, each of thirty-six square leagues, ample compensation has been allowed for an ascertained deficiency in their superficia contents. The close general agreement of the shore line on Franquet's map, with that shown on our most approved charts, with which I have compared it, would incline me to believe that Franquet's map is not a mere sketch, but either drawn from actual survey, or based on the most reliable authorities of the time. In reference to the ancient practice of the French crown, in fixing the boundaries of seigniories, all I can say is, that I believe the description in the several "titres de concession" to have been based on the best attainable information, and that there has been, in general, no difficulty in subsequently laying out these grants on the ground. In some instances it has occurred that from erroneous or defective information, the concessions have been found to overlap each other. In these and similar cases the older grant has been allowed to take precedence.

1141 As I have already stated, the greater part of the seigniories were not surveyed till long after their concession. Thus the westerly and rear outlines of the seigniories of Rigaud and New Longueuil were not finally established until the close of my operations on the Upper and Lower Canada division line, in one thousand eight hundred and sixty: yet the former seigniory was conceded in one thousand seven hundred and thirty-two, and the latter two years afterwards. As before remarked, the papier terrier was prepared by the seignior himself; and each concessionaire then, as a general rule, had his terre, or lot, marked out by one of the arpenteurs du roi, who appear to have been a higher class of surveyors, provided possibly with some special certificate. I cannot say where any official survey of the time, if performed, would be deposited of record; it would probably be in the office of the papier terrier.

As required by the second direct interrogatory, and conformably to the description contained in my answer thereto, I have drawn and annexed to this my deposition the figure of the superficies, which, in my opinion, the seigniory in question ought to have. See plan or sketch marked X.

(Signed) EDWARD TAYLOR FLETCHER.

Sworn and subscribed before me, at the city of Quebec, this ninth day of October, A. D. one thousand eight hundred and sixty-three.

(Signed) JAS. O'HALLORAN, *Com'r.*

1143 To the first cross-interrogatory the witness says: I am a provincial land surveyor for both sections of the province of Canada. After the requisite course of study and practice in the field, I obtained a diploma for Lower Canada in March, one thousand eight hundred and forty-two, and one for Upper Canada in the year following. I have practised professionally, both in Upper and Lower Canada. Eighteen years ago I was engaged on the survey of part of the tract known as the Montreal Mountain. In the year one thousand eight hundred and fifty eight I surveyed for government the island or peninsula opposite Toronto. In the same year, and in the two following years, I was on the division line between Upper and Lower Canada, as already mentioned in my answer to the first direct interrogatory. In the year one thousand eight hundred and sixty-two, I surveyed certain side lines in the townships of Lancaster, Lochiel, and the gore of East Hawkesbury. In the year one thousand eight hundred and sixty-one and one thousand eight hundred and sixty-three I was engaged in inspecting surveys.

To the second cross-interrogatory he says: I have never practised the profession of the law. About fifteen years ago I was duly indentured as law student to Messieurs Monk and Buchanan, of Montreal, but on
1144 removing to Quebec shortly afterwards, I obtained permission to withdraw from my indenture.

To the third cross-interrogatory he says: As already stated, I know nothing of the colonial ordinance of one thousand six hundred and twenty-six, referred in the second direct interrogatory.

To the fourth, fifth, sixth, and seventh cross-interrogatories he says: In drawing the figure called for in the said second direct interrogatory I have not assumed the centre of the portage to be the centre of the front of the seigniory. Such assumption I should consider as unwarranted. I have explained in my answer to the second direct interrogatory what would be my mode of procedure.

To the eighth cross-interrogatory he says: As I have already stated, I believe that the terms of the grant established the front of the tract conceded to be on the side of the portage, and towards the north. The French preposition sur has sometimes, undoubtedly, the meaning of "about" or "towards." These meanings are found in Randle Cotgrave's French and English dictionary of the year one thousand six hundred and eleven, who gives among other meanings those of "at," "by," "toward," "about."
1145 And in the authorities quoted sub voce, by Bescherelle, in his "Dictionaire National," of date one thousand eight hundred and fifty-eight, we find these remarks: "Cette preposition s'emploie dans un grand nombre de phrases qui marquent et qui endiquent la situation voisine ou superieure des choses dont ou parle cette fenetre donne sur la rue, donne sur un superbe jardin sur une sale cour." And further on one of its meaning is given as "joignant tout proche," and another as "vers, du cote de." It will have been already seen that I make no use of the expression sur le portage in fixing a starting point.

To the ninth cross-interrogatory he says: In my opinion the portage was referred to with a view of establishing the front aspect of the seigniory.

To the tenth cross-interrogatory he says: As already stated, I should determine the width by a straight line running from east to west.

To the eleventh cross-interrogatory he says: I should lay off the distance across the front from the "give-and-take," north and and south-line first es-

tablished in the mode mentioned in my answer to the second direct interrogatory.

1146 To the twelfth, thirteenth, fourteenth, fifteenth, sixteenth, and seventeenth cross-interrogatories he says: So far as I have heard, Franquet's maps are regarded as possessing authority, it being known that he was an engineer in the service of Louis the Fifteenth. I am not aware that his maps were ever treated as unofficial or unauthorized by the French or Canadian government, nor do I know of any reason why he should have neglected to be accurate in reference to such purposes.

To the eighteenth cross-interrogatory he says: I have stated in my answer to the second direct interrogatory how I should proceed if required to lay out and survey the tract in question.

To the nineteenth cross-interrogatory he says: I know nothing and can depose nothing.

To the twentieth cross-interrogatory he says: This cross-interrogatory is based upon the assumption that I have said that the descriptions of the ancient French grants in Canada are vague and incapable of definite location, which I have not done.

(Signed) EDWARD TAYLOR FLETCHER.

Sworn and subcribed before me, at the city of Quebec, this ninth
1147 day of October, A. D. one thousand eight hundred and sixty-three.

(Signed) JAS. O'HALLORAN, *Com'r.*

I hereby certify that the foregoing depositions were written down by the within-named Edward Taylor Fletcher, in my presence, that they were signed in my presence, and that before proceeding to testify the said Edward Taylor Fletcher took the oath mentioned in the commission hereto attached.

(Signed) JAS. O'HALLORAN, *Commissioner.*

Quebec, October 9th, 1863.

Exhibit A, Franquet's map. See original extract from the French archives sent forward to Washington under rule No. 8 [3,] being the same referred to as Exhibit AA, attached to Montreal depositions (No. 1,) Morin.

Exhibit X, Fletcher's sketch of the Sault Ste Marie seigniory. Original sent forward to Washington for use of U. S. Supreme Court, under rule No. 8 [3.]

1153 APPENDIX OF DOCUMENTS ADMITTED, TO BE READ ON THE HEARING WITHOUT PROOF OR STIPULATION ON FILE.

APPENDIX DOCUMENT No. 1.

Will of Arthur Noble, (No 9, Howard's letter.)

Extracted from the principal registry of H. M. court of probate, Ireland.

In the name of God, amen. I, Arthur Noble, of Churchill, in the county of Monaghan, and United Kingdom, at present residing in Old Burlington street, in the city of Westminster, do hereby make and declare this my last will and testament, hereby revoking and annulling all former wills by me made. My soul I recommend to the mercy of my God, my body to be privately interred. I give and bequeath to my dearly beloved wife, Catharine

Noble, all the cash, bank-notes, and chattels that shall be in my possession at the time of my death, together with my house in Burlington street, in the city of Westminster, and all the furniture, linen, plate, wine, &c, together with all the money in my banker's hands, and all arrears of rent due me at the time of my death, all exchequer bills or money in the stocks in my name at the time of my death. I also give, devise, and bequeath to my said wife two annuities I purchased from Lord Blayney and chargeable on the Castle Blayney estate, together with the jointure of one hundred and twenty pounds a year, chargeable on my lands in the county of Armagh. To my niece, Bettona Radcliff, I leave and bequeath the sum of one thousond pounds sterling. To my friend, Maxwell Blacker, of Great George's street, in the city of Dublin, I give and bequeath the sum of three hundred pounds
1154 sterling. To my friend, William Henry, of Castle Blayney, I give and bequeath one hundred pounds ster'g. And whereas I am entitled to a reversion or future interest in the real and chattle properties whereof I am now seized and possessed, respectively in the counties of Armagh and Monaghan, in the United Kingdom of Ireland, expectant upon the death of Charlotte Scott, my sister, without issue of her body lawfully begotten, now I do hereby devise and bequeath the said reversions or future interests in the said estates, and all my right or title therein, unto my nephew, John Slacke, of Dominick street, in the city of Dublin, esq., together with all my lands in the United States of America, and all bonds and mortgages due me in the same, he, the said John Slacke, paying all the legacies I have bequeathed in this my last will and testament, and paying all the debts that I shall owe at my demise. I do hereby appoint my dearly beloved wife, Catharine Noble, executrix, and Maxwell Blacker, of Great Britain street, in the city of Dublin, esq., and William Henry, of Castle Blayney, in the county of Monaghan, esq., executors to this my last will and testament. Given under my hand and seal, this twenty-second day of July, one thous'd eight hundred and fourteen. Whereas I am entitled to a lease or farm of land I purchased from John Byrne, esq., called Church-hill, I give, devise, and bequeath the said lands to my dear wife, Catharine Noble, during her natural life, together with all the profits or issues of the same, and at
1155 her demise I give, devise, and bequeath the same lands to my nephew, John Slacke aforesaid, his heirs and assigns.

ARTHUR NOBLE. [SEAL.]

Signed, sealed, published, declared, and delivered as the last will and testament of me, Arthur Noble, esq., and signed by us at the request and presence of the s'd Arthur Noble and in the presence of each other, the words "to my said wife" being first interlined by the said Arthur Noble.

JAMES MATHEW STRONGE.
GRACE TEW.
RICH'D HOLMES.

The last will and testament of Arthur Noble, formerly of Church-hill, in the county of Monaghan, but late of Old Burlington street, in the city of Westminster, deceased, (having, and so forth,) was proved in common form of law and probate. Granted by the most reverend Father William, and so forth, to Maxwell Blacker, of North Great George's street, in the city of Dublin, esq., one of the executors named in said will, he being first sworn personally, saving the right of Catherine Noble and William Henry, the other ex'ors; also saving, and so forth. Dated the twelfth day of May, 1817.

(Signed) M. KEATINGE.

I certify that the foregoing copy has been compared with the orig'l will

deposited in the principal registry and that it is a true and correct copy thereof.

(Signed) H. BEGLEY, *Principal Registry.* [SEAL.]

1157 APPENDIX DOCUMENT No. 2.

Will of John Slacke, (No. 10, *Howard's letter.)*

Extracted from the principal registry of H. M. court of probate, Ireland.

In the name of God, amen. I, John Slacke, of Dominick street, in the city of Dublin, barrister at law, do hereby make and publish my last will and testament, hereby revoking all other and former wills by me made. I leave and bequeath all my estates, real and personal, of whatever nature and kind soever, to my dear wife, Agnes Slacke, in as full and ample a manner as I held the same, subject, nevertheless, to the just debts which I may owe at the time of my death and which I hereby direct to be paid; and my will is that my said wife shall have full power and authority to give, sell, or dispose of my said estate, and every part thereof, by her last will and testament, executed so as to pass real estates, or by any deed or writing under her hand and seal, and witnessed by two credible witnesses, as fully as I could, if living, dispose of the same; but in case my said wife shall not so dispose of my estate, or if any part thereof shall remain undisposed of, then my will is and I hereby bequeath all my said real and personal estate which shall remain so undisposed of to my son, Arthur Gray Slacke, *and his heirs,** subject to one thousand pounds apiece for each of my daughters who shall be living when my said son shall become seized or possessed of my said estate; in case there shall be more than two of my daughters then living, and if there shall at such time
1158 be only two of my said daughters living at such time, (1 John Slacke) then subject to two thousand pounds apiece for each of my said daughters, and if there shall be only one such daughter then living, then subject to three thousand pounds for such daughter, and I hereby, in that case, *order** such sums of one thousand, two thousand, and three thousand pounds each, to be charged upon my said real and personal estate, and to be paid to my said daughters upon their *ages** of twenty-one years, or days of marriage, whichever shall first happen, with interest from the day of the death of my said wife, at the rate of five pounds by the hundred pounds. Provided always, that nothing herein contained shall be taken or understood to limit or restrain the absolute estate which I have hereby given and intend to give to my said drar wife, subject only to the terms of her disposing of my said estates by deed or will, as aforesaid; and I hereby appoint my said dear wife sole executrix of this my will and guardian of the persons and fortunes of all my children who may be living and under age at the time of my death. In witness whereof, I have hereunto set my hand and seal, this eighth day of January, in the year of our Lord one thousand eight hundred and eight.

JOHN SLACKE. [L. S.]

Signed, sealed, delivered, and published by the said John Slacke,
1159 as and for his last will and testament, in the presence of us, who, by the desire of the said John Slack, and in his presence, and in the presence of each other, have hereunto subscribed our names.

ROB'T WAYNE.
FOSTER MITCHELL.
RICH'D H. MITCHELL.

*Int'd.—JOHN SLACKE.

Whereas by my will annexed, dated the 8th day of January, 1808, I did devise as therein is devised, and whereas, since making the same, some of my children have been born and I have since been left certain properties in the counties of Monaghan and Armagh, *and in America,** by my uncle, the late Arthur Noble, esqu., and I am inclined to dispose of the same and to provide for my said lately born children, now I do hereby leave and bequeath all my estates, real and personal, in Ireland, England, and America, to my dear wife Agnes Slacke, her heirs and assigns forever, upon trust that by sale, mortgage, or disposition thereof, as she may think fit, she may pay my last debts, which I hereby charge thereon, and that she may thus dispose and divide the same amongst my children, always taking thereout for herself the jointure of two hundred pounds yearly for her own use, and such sum, not exceeding five hundred pounds, for her own use, as she shall think fit; and I hereby empower her to exclude any child or children she may choose,
1160 or to give the whole or any part she chooses, to one *or more** of my children as she may by deed or will appoint, it being my intention that she may divide *amongst** or charge the same for my said children as she chooses without any control either as to amount or nature of the estate to be given to them or any of them; and in case my said wife shall die without making such division or appointment, then my will is that my son Arthur shall take an estate for life in my said estates after payment of debts, with remainder to his first and other sons in tail male, and with a power of charging two thousand pounds for younger children, *then** my son John for life with a like power and remainder to his first and other sons, then my son Charles for life with a like power and remainder to his first and other sons, but all the estates to be charged, in case of no appointment by my dear wife, with one thousand pounds for each of my daughters from the day of my death, and in failure of my said sons and their issue the whole to go, in default of such appointment, to my daughters and their heirs as tenants in common.

Given under my hand and seal this third day of March, 1818.

JOHN SLACKE. [L. S.]

Signed, sealed, and published by the said John Slacke, as and for his last will and testament, in the presence of us, who have hereunto set
1161 our hands, in the presence of the said John Slacke and by his desire and of each other, this 8 January, 1820.

8 of January, 1820.

DONALD STEUART.
MATHEW LENNAN.
BARTH'W COGHLAN.

The last will and testament of and codicil of John Slacke, late of Dominick street, in the city of Dublin, esq're, deceased, (having and so forth), are found in common forms of law and probate granted by the most Rev'd Father Williams, and so forth, to Agnes Slacke, of Coper Augus, in Scotland, the sole executrix named in said will and codicil, she being first sworn, by requisition saving, and so forth.

Dated the 4th day of January, 1822.

1163 APPENDIX DOCUMENT No. 3.

Will of John Gray Slacke, (No. 11, Howard's letter.)

Extracted from the principal registry of H. M. court of probate, Ireland.

This is the last will and testament of me, John Gray Slacke, esquire, late

*Int'd.—J. S.

a captain in her majesty's twenty-fifth regiment of foot, now of Castle Blaney, in the county of Monaghan. First, I give and bequeath, as specified legacies, the silver dressing case presented to my father by the late Col. Leslie unto my cousin Joseph Omsly Radcliff, of Mount street, Dublin, esquire, barrister at law, and the silver salver, presented to my said father by the magistrates of Dublin, unto that son of my sister Mrs. Rottan who shall be second in order of birth at the time of my decease. And whereas I am entitled to and am now prosecuting before the Congress of the United States of America a claim to an undivided half part or share of the fief or seigniory of Sault St. Marie, in the said States, and said claim was lately referred to a committee of Congress, which had not yet made its report thereon, now I devise and bequeath unto Henry Battersby, of Blessington street, in the city of Dublin, esquire, his heirs, executors, and administrators, one undivided half part or share of the said fief, and all of my estate, right, title and interest, claim or demand whatsoever, therein or thereto, together with all other property, goods, and chattels, real, freehold, and personal, which I shall be seized or possessed of or entitled to at the time of my decease. To hold the same unto the said Henry Battersby, his heirs,
1164 executors, and administrators, upon trust, nevertheless, and to and for the uses, intents, and purposes hereinafter mentioned, videlicet: upon trust, in the first place, out of my chattel, property, and effects to pay and discharge all my just debts, legacies, and funeral and testamentary expenses so soon as may be convenient after my decease, and subject thereto, upon trust, out of all or any of the goods and chattels, assets and effects hereby devised and bequeathed to my said trustee; to lay out, expend, or retain in his hands such sum and sums as he shall think proper, advisable, or necessary for proceeding to obtain the recovery and possession of and for prosecuting the claim to the said fief, and to take and adopt such measures and to make and perform such agreements for assigning and assuring any part or parts of said fief to any person or persons in consideration of services done or money laid out by such person or persons in and about the recovering and obtaining possession of the same as my said trustee, his heirs, executors, and administrators shall in his or their judgment deem expedient, and without being liable to be called to account by any person for the exercise of his or their judgment in respect of the said trust, and when; and if the said fief shall be recovered or got into his or their possession, upon trust to assign and assure any part or parts of said fief which he or they, or which my mother, Mrs. Agnes Slacke, or which I, the said John Gray Slacke, shall or may at any time or times heretofore have promised or agreed, or shall hereafter promise or agree, to make over in consideration of services performed or money laid out by such person
1165 or persons for the purpose aforesaid; and so soon as the said fief shall be recovered or got possession of as aforesaid, and if the legislature of the United States shall permit, and my dear wife Louisa Maria shall be then living, upon trust to sell and dispose of the same and every part thereof in such manner and for such sum or sums as my said trustee, his heirs, executors, or administrators, shall be able to obtain for the same; and when and if the same shall be sold and disposed of, to invest in any security or securities which he or they shall think proper, or in the purchase of land, the net monies to arise or accrue from such sale or sales after deducting and retaining thereout; and I hereby give my said trustee, his heirs, executors, administrators, and assigns, full power and authority to retain thereout, for the benefit of my said wife, all costs, charges, and expenses which I or my said trustee, his heirs, executors, or administrators, shall pay, sustain, or be put to, in or about the recovering or getting possession of or selling the said fief; and upon further trust, from time to time, to pay all and every

the profits and proceeds of the monies to arise from such sales as aforesaid, or of the securities upon which the same shall be put out or invested, unto my said dear wife, in case she shall be then living as aforesaid, and her assigns during her natural life, and after her decease, (whether the said fief shall be then in the actual possession of my said trustee, his heirs, executors, or administrators, or not,) to assign and assure the said fief, or if sold, then such net sums as shall arise from such sale and the securities upon
1166 which the said net sums shall be then invested unto that son of my sister, Mrs. Rotton, who shall be second in order of birth at the time of the decease of my said wife; provided if said fief shall not be recovered and sold at the time of the decease of my said wife, that such son of my said sister shall first repay to my said trustee, his heirs, executors, or administrators, all such costs, charges, and expenses as aforesaid; and if the said fief or any part thereof shall be in the lifetime of my said wife conceded, granted, or allowed by the legislature on condition that the grantee or grantees shall take actual possession thereof, or if any condition shall be annexed by the grant or concession which shall prevent the same being converted into money by my said trustee, his heirs, executors, or administrators, upon this, further trust, that my said trustee, his heirs, executors, or administrators, shall assign and assure my moiety of said fief and every part of the same unto such son of my sister, Mrs. Rotton, as last hereinbefore described, and to his heirs and assigns, upon his paying to my said wife, her executors, administrators, or assigns, the sum of one thousand pounds, and to my said trustee, his heirs, executors, or administrators, all such costs, charges, and expenses as shall be laid out as aforesaid in or about the recovering or prosecuting the claim to the said fief; and if such son, as aforesaid, of my said sister, shall refuse, neglect, or decline to pay said sum of one thousand pounds, and such costs, charges, and expenses as aforesaid, within six months after he shall be called upon in writing by my
1167 said trustee, his heirs, executors, or administrators so to do, then upon trust, to assign and assure the said fief, and every part thereof, unto my said wife, her executors and administrators, appointees and assigns, forever, if she shall then living; but if not living, then unto executors, administrators, and assigns, forever, and subject to my said debts, legacies, and funeral and testamentary expenses, and to the power to my said trustee, his heirs, executors, or administrators, to retain or pay and contribute any sum or sums as aforesaid towards or for the purposes of prosecuting said claim to said fief, and also subject to the several trusts herein contained as to the said fief and to the money to be realized therefrom, if any, upon trust, to pay, assign, transfer, assure, and make over all the rest, residue, and remainder of my property, estate, and effects of every kind, whether real, freehold, or personal, unto my said dear wife and her assigns as her and their own property, goods, and chattels, forever; provided always, and it is my will that my said trustee, his executors, administrators, and assigns shall not on any account be chargeable for any other monies than what he shall actually receive, and that he shall not be responsible for involuntary losses, nor for the acts of my executrix hereinafter named, but each for his or her own acts only, and that it shall be lawful for my executors, their executors, and administrators to deduct, retain, and reimburse himself or themselves, and to pay and allow each other all costs, charges, damages, and expenses which he, she, or they, or either of them shall be put to in or
1168 about the execution of this my will, and I appoint my said dear wife and Henry Battersby, of Blessington street, Dublin, esquire, executors of this my will.

Dated this twenty-ninth day of March, one thousand eight hundred and forty-one.

J. G. SLACKE. [L. S.]

Signed and sealed as and declared by the said John Gray Slacke to be his last will and testament, in the presence of us, who, being present at the same time, have, at his request and in the presence of him, of each other, subscribed our names.

Witnesses: GEORGE SHEEGOG.
JOHN WARD.

1st codicil.—I will and bequeath to Henry Battersby, esq., one large silver cup, to be kept in his family as a cauddle cup, *in his own family.*

J. G. SLACKE. [L. S.]

GEORGE SHEEGOG.
JOHN WARD.

The last will and testament and codicil of John Gray Slacke, late a captain in her majesty's twenty-fifth regiment of foot, and late of Castle Blaney, in the county of Monaghan, deceased, (having and so forth,) was proved in common form of law, and probate thereof granted by the most Rev'd Father John George, and so forth, unto Louisa Maria Slacke, of Douglas, in the Isle of Man, widow of deceased, one of the executors of said will and codicil, she being first sworn by requisition saving the right of Henry Battersby, esq., the other executor, and of every person whatever.

Dated the twenty-first day of December, eighteen hundred and forty-seven.

(Signed) M. KEATINGE.

I certify that the foregoing copy has been compared with the original will deposited in the principal registry, and that it is a true and correct copy thereof.

J. H. BEGLEY, *Principal Registry.*

1171 APPENDIX DOCUMENT No. 4.

Extracts from records of French claims at the land office, Detroit, (No. 1, Howard's letter.)

Translation.

The counsel for the petitioners also introduced and read in evidence the following proceedings and documents from the record books of the commissioners, for the examination of the titles of persons claiming lands under the provisions of the act of Congress of March 26, 1804, entitled "An act making provision for the disposal of the public lands in the Indiana territory, and for other purposes," and under subsequent acts of Congress.—(See vol. 2, p. 311 to 315 of said records.)

MARCH 7, 1805.

The claim of Francois Paul Malcher was taken up and read in the following words, to wit:

28 DECEMBER, 1804.

Geo. Hoffman, esq., Register, &c., &c.:

Take notice that I claim title to the farm on which I now live, in Kamtramck township, of five arpents in front by eight in depth.

For Francis Paul Malcher—

(Signed) PETER AUDRAIN.

1172 And thereupon the evidence adduced by the said claimant, in support of his claim, being also read in the order following, to wit:

No. 1. A grant from the governor and intendant of New France and Louisiana, to Chas. Chene, for four acres in front by forty in depth.
Dated the 14th July, 1734, in the words following, to wit:

Translation.

The Marquis de Beauharnois, commander of the royal and military order of St. Louis, governor and lieut. general for the king in all New France and the lands and countries of Louisiana; Gilles Hocquart, cherv., counsellor of the king in his councils, intendant of justice, police, finance, and the marine, in said countries: Upon the representations that have been made by the habitans of Fort Ponchartrain, of the Straits of Lake Erie, to Messrs. Boisheboort, captain of a company of the detachment of the marine, heretofore commandant of said Fort Ponchartrain, and Pean, chevalier of the mili-
1175 tary order of St. Louis, major des villes, and government of Quebec, at present commandant of said fort, and whereof they have rendered us an account, stating that up to the present time they have not dared undertake any clearings of land and to establish farms, for the reason that they have no title to secure to them their property; that if it shall please us to grant them titles they will not only be in condition to labor without incurring the risk of being disturbed, but that from their labor there will result considerable advantages in the way of procuring in said places an abundance of provisions as well for the convenient subsistence of the garrison as for that of the habitans and the voyageurs; which having considered, and having seen the letters patent of his majesty, given at Paris in the month of April, 1716, registered in the superior council the first of December following, and the decree of the king's council of state of the 19th May, 1722, we
1177 have, in his majesty's name, given, granted, and conceded, and give, grant, and concede, upon title of cens et rente, from henceforth and forever, to Charles Chene, an habitant of Fort Ponchartrain, of the Strait, residing there, for him, his heirs, and assigns, for the future, (a l'aneaun,) a concession of lands situated upon the Strait of Lake Erie, (sur le Detroit du Lac Erie,) containing four arpents in front (de front) by forty in rear, (sur quarante de profonduer,) adjoining, at the side towards the W. SW., (O. SO.,) the lands heretofore granted to Joseph Ladaroute, bounded by a line N. NW. (N. NO.) and S. SE; and on the other side, towards the E. NE., adjoining unconceded lands; in front, by the Straits of Lake Erie, and in its depth, (profondeur,) by a line E. NE. and W. SW., (O. SO.,) adjoining in like manner non-conceded lands, to enjoy, do with, and to dispose of the same by the said Chene, his heirs, and assigns, upon the charges,
1179 clauses, and conditions following, to wit: that the said Chene, his heirs, and assigns, shall be held to carry their grain to be ground at the canal mill when there shall be one established, on pain of confiscation of the grain and of an arbitrary fine; to hold there, or cause to be held there, fire and place, (d' y tenir ou faire tenir feu et lieu,) within a year from to-day at the farthest; to allow his neighbors the use of lanes as they shall have need of them; to cultivate the said land; to permit all ways that shall be judged necessary for the public utility; to make division fences in the manner that shall be regulated, and to pay to the receiver of the king's domain in that region, or to the clerk of said receiver at Detroit, one sou per year quitrent for each arpent of front, and twenty sous rent for each 20 arpents in superficies, making for the said four arpents front by forty in depth four sous of quitrent and eight livres of rent; and further, three bushels (un minot) of wheat for the four arpents of front, all payable on the day of the feast of St. Martin, the first year of which will become due on the
1181 11th of Nov., 1735, and to continue from year to year; the said quitrents bearing the profit of alienation, (portant profit de lods et ventes,)

default, and fine, with all other royal and seignorial rights, when the case shall happen, according to the coutume de la prevote et vicomte de Paris. It shall, nevertheless, be lawful for the said Chene to pay the said four sous of quitrent and eight pounds rent in peltries, at the Detroit price, until there shall be established a money of currency; reserving, in the king's name, upon the said plantation, all the wood his majesty shall need for carpenter work and the construction of ships and forts which he may hereafter establish, as well as the property of the mines, ores, and minerals, if any shall be found within the limits of the said concession; and the said Chene, his heirs, and assigns, shall be held to cause immediately the said concession to be laid out, measured, and bounded in its whole width and depth, at his own
1183 expense, and to execute the conditions contained in the present instrument, and to take out a brevêt of confirmation from his majesty within two years, on pain of the nullity of these presents.

Made and given at Montreal, the 14th of July, 1734.

(Signed) HOCQUART, [L. S.]

Par Monseigneur DE VALMAR.

BEAUHARNOIS, [L. S.]

Par Monseigneur DE CHEUZEMONT.

2d. A copy of the deed of confirmation of the above grant by the king of France, dated 22d February, 1735, in the words following, to wit:

[Translation.]

Extract of the registers of the superior council of Quebec.

From the brevet of ratification of the concessions made at Detroit by Messrs. Les Marquis de Beauharnois, governor and lieutenant general for the king in New France, and Hocquart, intendant in the said country, has been extracted the following:

1185 On this day, the 22d of February, 1735, the king being at Marly, wishing to ratify and confirm a concession made by the Marquis de Beauharnois, governor and lieut. general for his majesty, and Hocquart, intendant in New France, the 14th of July, upon title of cens et rente, (quitrent and rent,) to a person named Chene, an habitant of Fort Ponchartrain, of a piece of land four arpents of front by forty of depth, (quartre arpents de front sur quarante de profondeur,) situated on the straits of Lake Erie, adjoining on one side, towards W. SW. (O. SO.,) lands conceded to one named Ladaroute, and on the other side, towards E. NE., lands not conceded, in front by the straits of Lake Erie, and in rear (dans le profondeur) by a line E. NE. and W. SW. (O. SO.,) joining unconceded lands.

His majesty has ratified and confirmed the above-mentioned concession, wishing that the said Chene, his heirs and assigns, may enjoy the said ground to him conceded, upon the charges, clauses, and conditions, to
1187 wit: That he shall be bound to carry his grain to be ground at the canal mills, when such shall be established, on pain of confiscation of his said grain and arbitrary fine; to hold or cause to be held fire and place (feu et lieu) on said concession, within one year; to open lanes for his neighbors as there shall be need of them; to cultivate his land and cause it immediately to be laid out, measured, and bounded, at his expense, if that has not been done, in its breadth and depth; to permit such ways as shall be judged necessary for the public utility; to make division fences according to regulations, and to pay each year to his majesty's receiver in Canada, or to the receiver's clerk, who shall reside at Detroit, one sou of quitrent for each arpent of front and twenty sous for each twenty arpents in superficies, and

besides, one demi-minot (1½ bush.) of wheat for two arpents of front, all payable yearly on the day of the feast of St. Martin, the first year falling due on the 11th of November, 1735; the said quitrents bearing the profit of alienation, (portant profit de lods et ventes,) default, and fine,
1189 with all other royal and signiorial rights, when the case shall happen, according to the coutume de la prevote and vicomte of Paris. It shall, nevertheless, be lawful to pay the said quitrent and rent in peltries, at the Detroit prices until a money of currency shall be established, his majesty reserving upon the said land the wood he shall need for the building of ships and forts he may establish for the future, as well as the property of the mines, ores, and minerals, if any shall be there found. And in testimony of his will he has ordered me to make out the present brevet, which is to be registered in the clerk's office of the superior council of Quebec, in order that the same may there have the effect that shall belong to it, and which he has consented to sign with his own hand, and to be countersigned by me, his councillor, secretary of state, and of his orders and finances.

(Signed) LOUIS.

Et plus bas, PHELLIPPEAUX.

1191 Registered in the registers of the superior council of New France, the king's procureur general being heard according to the order of this day, by me, councillor secretary of the king, chief clerk of said council. Subscribed at Quebec, the 26th Sept., 1735.

(Sig.) DAINE.

[Here follow other deeds.]

At page 324, the record proceeds:

And thereupon, the same being maturely considered, it is adjudged and determined by the commissioners that the claim of the said Francois Paul Malcher to the tracts of land hereinbefore described be rejected.

The following are the grounds on which the commissioners have thought it their duty to view this claim: 1st. Altho' the grant of the governor and intendant to Charles Chene for four acres in front by forty in depth, together with the subsequent ratification thereof by the king of France, was, in our opinion, originally and still is valid and effectual, yet the subsequent conveyances of said title appear to have been irregular, and in nowise sanctioned by the laws and usages of the American government, under which the two last of said transfers were made, nor do they conceive that
1193 the sale and conveyance made by the widow of Chas. Chene to Wm. St. Bernard was conformable to, or at all sanctioned by, the laws then in force here or in France.

2d. The continuation of this original grant by the French commanding officer, Mons. de Belestre, to Wm. St. Bernard, we must conceive to be ineffectual and void, for reasons assigned in many other of our adjudications, to wit: because no evidence has been introduced to prove that Mons. Bellestre had the power either to issue patents or to grant continuations of those issued by the governor and intendant.

3d. The claim to one acre in front by forty in depth, conveyed by Gabriel Casse St. Aubin to Bernard, the 8th Oct., 1771, does not appear to be derived from either the French or British government.

And the board adjourned to 8th March, 10 forenoon.

1195 Counsel also referred to vol. 16 of Am. State Papers, p. 308, for the final confirmation of this claim by the board, under the acts of Oct. of March 3, 1805, (2 Stats. U. S. at Large, p. 343,) and of March 3d, 1807, (ib., p. 437;) the confirmation being date July 6, 1807. The above

proceedings and documents, relative to the Malcher claim, are found in vol. 2 of the Records of the Board, p. 311, &c.

Jean Marie Beaubien's claim, (see vol. 2 of said records, p. 325, &c.)

"On the 8th of March, 1805, the claim of Jean Marie Beaubien, esq., taken up for consideration, and the notice filed by him with the register of the land office being read, as follows, to wit:

26TH DEC'R, 1804.

Geo. Hoffman, esq., Register, &c., &c.:

Please to take notice that I claim title to a tract of land of two arpents in front of River Detroit by seventy in depth, which I purchased from Billian L'Eaperance, &c.

For Jean Marie Beaubien, esq.—

PETER AUDRAIN.

1197 And the evidence adduced by the claimant in support thereof being also read, in the following words, to wit:

Antoine de Lamothe Cadillac, ecuyer, seigneur du lieu de Bonaquet Mondesut, and commandant for the king of the straits of Ponchartrain: His majesty having given us power by his despatches of the 14th, 17th, and 19 June, 1704, 1705, and 1706, to concede lands at Detroit, in the manner we should find fit and convenient, we have, in virtue of his majesty's said powers, given, granted, and conceded to the Sieur Jacob de Marsac, his heirs and assigns, an extent of lands of two arpents in front upon (sur) twenty arpents in depth, (de profondeur,) adjoining on one side the lands of Jacob Gorion, and on the other the lands of Andre Bombardier, and at the south the great river; which two arpents of front shall be laid out and taken in the rear (profondeur) at the point of the compass (N. NO.)

1199 N.NW., and in case, by the alignment that shall be made of it, there shall be found wanting any land to make up the two arpents conceded, there shall be furnished to him so much more land in another place not conceded, without any other indemnity; which two arpents of front by twenty in the rear, the said Jacques de Marsac, his heirs and assigns, shall enjoy in perpetuity in full property, with the right of hunting and fishing, and [fur] trading, with the reservation of hares, coneys, partridges, and pheasants; and, in consideration, the said Jacob de Marsac, his heirs and assigns, shall be bound to pay us, our heirs and assigns, at our chateau and principal manor, annually, on the 20th of March for the said planation and said ground, the sum of five livres quitrent and rent; and furthermore, and over and above this, and for the other rights which we release, the sum of ten livres in good and merchantable peltries, and whenever there shall be in that country silver money or current money, the said Jacob de Marsac shall pay the said rents, in perpetuity in such silver or current money.

He shall in like manner be bound to commence clearing and im-

1201 proving (defricher et mettre en valeur) his said concession in three months from the day of the date of these presents; in default whereof we will grant his plantation to whom he shall belong. He is also to be held, he, his heirs and assigns to the charges, clauses, and conditions following, to wit, to come, bring, plant, and aid in planting, a large May-pole before the door of our principal manor on the first day of May in each year, and in default of his satisfying this requirement he is to pay us three livres in silver or peltries; he shall be in like manner bound to come for grinding to the mill which we have or may have hereafter, paying for the right of grinding of whatever kind may be the grain, eight pounds weight per minot; and in

case he shall sell his plantation in whole or in part he shall be bound to let us know of it, and reserve to us the preference at the same price and sum he shall be able to get for it, and on the same lawful conditions. He cannot sell, cede, nor transfer it in mortgage (a moin morte) in any manner whatever, except by our consent, and he shall be held to the charges and public servitudes as well as to the rights of fine on alienation, (droits de lods et ventes.) The said Jacob de Marsac cannot, during ten years,
1203 labor or cause others to labor directly or indirectly in the trade of a blacksmith, edge-tool maker, locksmith, armorer, or brewer of beer, without having a license therefor in writing, under our hand. We moreover reserve the woods we shall need for fortifications and the building of barques and ships. The said Jacob de Marsac, his heirs and assigns, may send and cause to descend to Montreal and other places in the low colony all the effects he shall have, and bring back merchandize for the same as he shall choose, and in such quantities as he shall desire, on condition that he shall sell his effects and merchandizes that come from the low colony with his own hands and by himself alone or by other habitants of this place, and not by his hired men or by pedlers or strangers not established in and residing in the place with their families, on pain of confiscation and loss of such effects and merchandizes; and in case said Marsac sells, cedes, and transfers his plantation in whole to a foreigner, or to another not established in said place, the possessor or acquirer of said plantation, in whatever manner he shall become such,
1205 shall be bound to the same charges, cens et rente, as the said Jacob de Marsac; and should he, the said Jacob de Marsac, sell, cede, or transfer part of his plantation to a foreigner, the acquirer, in whatever manner he became such, shall be obliged to pay to us, our heirs and assigns in perpetuity, the same rate of rent or cens for the said plantation, and besides this, for the rights we have released, the sum of ten livres each year on the 20th of the month of March. The said Jacob de Marsac may not sell upon his said plantation nor trafick in brandy with the Indians on pain of confiscation and loss of his plantation, and the brandy that shall be found there, and of the effects which shall have been derived from it; and if such acquirer, in whole or in part, is an habitant and pays otherwise the sum of ten livres for the rights which we release, he shall pay us but the cens et rente of his acquisition, and not the sum of ten livres, over and above; and if the plantation of the said Sieur Marsac shall pass into other hands, in what manner soever this may be done, and he shall be the owner of another
1206 piece of ground, house, or plantation, he, the said Jacob de Marsac, shall pay us, our heirs and assigns, in perpetuity, over and above the cens et rente of the plantation, ground, or house, the sum of ten livres for the said rights we have released, and in case the said Marsac shall
1207 remain without possession of any property in land, (fond de terre,) house, or plantation, he shall fail of all his rights to him granted by this present concession made like the other part at the Fort Ponchartrain, this 10th of March, 1707, issued the said day and year, approved, (with five renvais on the margin, and one on the page, and two words erased in the line;) nevertheless, this and generally all the clauses, charges, and conditions above expressed in reference to us, our heirs and assigns, to enjoy in full property the said concession, to buy, sell, and trade with the French and the Indians, while conforming to the regulations and the orders of his majesty. Done at Fort Ponchartrain this 10th of March, 1707.

Signed to the original:

LAMOTHE CADILLAC.

And lower down, Grand Menil, avec paraphe.

Compared with the original presented by the Sieur Jacob de Marsac by the royal notary of the isle of Montreal, and by him deposited in the office of the said notary for reference, the 28th of August, 1707.

(Sig.) LEPAIEUR.

[Here follows other matter.]

At page 330 the record proceeds:

" And the same being maturely considered by the commissioners,
1209 it is adjudged and determined that the claim of the said Jean Marie Beaubien to the land in his notice mentioned be rejected.

" The commissioners are of opinion that the original grant by Antoine de Lamothe Cadillac ought to be considered as valid, but it is not proved to them that this tract of land has been regularly sold and conveyed from the original grantee to the present claimant."

[For the confirmation of the two arpents front by twenty in rear of this claim, see Am. State Papers, vol. 16, p. 305, referred to by counsel.]

1211 *Charles and Nicholas Gouin's claim, (see vol. 3 of said records, p. 430 to p. 435.)*

" On Saturday the 21st Dec'r, A. D. 1805, the board met at 10 in the forenoon, examined the claim of Chas. and Nicholas Gouin; and the notice by him filed with the register of the land office being read in the words following, viz:

" The commissioners appointed to investigate titles to land in the district of Detroit are hereby notified that the subscribers hereto claim title to the two following tracts of land situate on the River Detroit, and near the town of Detroit, one containing 2½ arpents in front by 60 in depth, and the other containing one acre in front by 80 in depth, French measure.

" The subscribers also give the commissioners to understand and be informed that Antoine Lamothe Cadillac, esq., lord of Bonaquet Monde-
1213 sert, and commandant for the king of France of the Fort Ponchartrain, did on the 10th day of March, 1707, by virtue of a sufficient power vested in him by the said king, grant and concede to Francois Forfart Delorme, interpreter for the said king, a piece of land, (part of the tract first above mentioned,) containing two acres or arpents in front by 20 in depth. A copy of the grant or writing executed on that occasion by the said Cadillac has been delivered to the register of the land office at Detroit for the purpose of being recorded as evidence of our title."

[NOTE.—The remainder of the notice is irrelevant.]

(Signed) CHARLES GOUIN.
" NICHOLAS GOUIN.

"And upon mature consideration of the evidence offered in support of this claim, the commissioners are of opinion that so much of the claim aforesaid as are for the tract granted by Antoine de Lamothe Cadillac ought to be affirmed, and the same is accordingly affirmed.

The grant by Lamothe Cadillac is as follows, viz:

1215 " *Concession to Delorme.*

Translation.

"Antoine Delamothe Cadillac, esq., lord of Bonaquet Montdesert and commandant at the Strait, Ponchartrain:

" His majesty having given us power by his despatches of the 14th, 17th, and 19th of June, 1704, 1705, 1706, to concede lands at the Strait in the

manner we should find good and convenient, we have, by virtue of the said power of his majesty, given, granted, and conceded to Sieur Francois Fafort Delorme, interpreter for the king at that place, his heirs and assigns, a piece of land of two arpents of front by 20 arpents of rear, (de deux arpents de front sur 20 arpents de profondeur,) adjoining on one side our domain and on the other Francois Bosseron, an extent of land of two arpents of front and twenty arpents of rear, and at the south the great river; which two arpents of front shall be laid out and taken in the rear at the point of the compass N.NW. (N.NO.,) and in case by the allignment that
1217 shall be made there shall be found wanting any land to make up the two arpents.

[The remainder or this grant is in the same language as the foregoing one to Jean Marie Beaubien, and need not therefore be repeated.]

"Done at Fort Ponchartrain the 10th of March, 1707.

(Sig.) LAMOTHE CADILLAC.

Compared with the original minute presented by the Sieur Etienne Verone de Grandmesnil, and at the same time remitted to him by the royal notary of the prevote de Quebec there residing.

Quebec, Aug. 23d, 1742.

(Sig.) LOUET.

Celoron, chevalier de l'ordre militaire de St. Louis, major, commanding at Detroit, Erie, &c.:

On the request made to us by the Sieur Claude Gouin, an habitant at Detroit, to grant him a continuation [of a grant] of lands, 40 arpents
1219 in rear upon 2½ in width (de large,) which he occupies in virtue of the present title papers above appearing, we, in virtue of the power to us given by the general and the intendant, have granted, and do hereby give, grant, and concede to the said Gouin for him, his heirs and assigns, the said continuation of 2½ arpents in width by 40 in rear, (de profondeur,) by means whereof he will injoy sixty arpents in rear (de profondeur) by 2½ arpents wide, (de large,) upon the charge (a la charge) on his part, besides the rents mentioned in said contract, to pay for the benefit of the king annually, the first year expiring on the 11th of Nov. 1751, the sum of 5 pounds to the receiver of the king's domain.

Given at the Strait (au Detroit) the 28th of Feb. 1751.

(Sig.) CELORON,

Navarre, subdelegate of the intendant."

1221 *Felix Peltier's claim, (see vol. 4 of same records, pp. 78, 79, 80, 81, 82, 83, and 94.)*

"On Tuesday, the 4th of Feb., A. D. 1806, the board met at 10 a. m., pursuant to adjournment, and proceeded to the examination of the claim of Felix Peltier, and the notice by him filed with the register of the land office being read in the words following, viz:

The commissioners appointed to investigate the titles to lands in the district of Detroit are hereby notified that I claim to be the real and only owner and proprietor of the tract of land situated on the River Detroit, about one and three quarter miles above the town of Detroit, containing 4 acres *acres* in front by 40 in depth, bounded on the northeast by a farm belonging to Jean B. Chapoton, on the southwest by Jean B. Meloche, in front by the road which runs between the river and the settlements on it, and in the rear by unlocated land, together with all the buildings and improvements
1223 thereon, and the hereditaments and appurtenances thereunto belong-

ing or appertaining. My evidence of title is as follows: [which notice is found in vol. 3 of said records, p. 304.]

[Among the evidences of the claimant's title was a grant or concession from the Marquis de Beauharnois, commander, &c., and Gilles Hocquart, with the aforesaid titles, to Jean Gilbert dit Sans Peur, dated at Montreal, July 9, 1734, and a brevet of ratification of said concession by the king of France, dated Feb. 22, 1735, in the same words contained in the like papers embraced in the above claim of Francis Paul Malcher, except as to boundaries of the tract; and copies of the same are therefore omitted, to be included under the Felix Peltier claim.]

At page 94 the record proceeds:

"And the said claim being fully examined and considered, it is considered by the commissioners that the same be affirmed with a reservation of the rights of interfering claimants being private persons."

1225 *Claim of Antoine Morass, (see vol. 4 of same records, pp. 104 to 110 and 115.)*

"On Monday, the 24th February, 1806, the board met at 10 in the forenoon, pursuant to adjournment, and proceeded to the examination of the claim of the widow and heirs of Antoine Morass, deceased; whereupon the notice by them filed with the register of the land office being read in the words following, viz:

"Detroit, 11 Sept. 1805, the commissioners of the U. S. appointed to investigate the titles to lands in the district of Detroit, pursuant to the act of Congress entitled 'An act making provision for the disposal of the public lands in the Indiana territory and for other purposes,' and also in conformity with the act supplementary thereto, are hereby notified that the subscriber, on behalf of herself as the widow and relict of Antoine Morass, deceased, as well as in behalf of their children, acting as their natural guardian and next friend, claim title to the following piece of land situated on River Detroit, on
1227 north side thereof, containing three acres in front and extending back forty acres in depth; bounded in front by the said river, on the S. SW. by the farm lately owned by William St. Bernard, but now owned by Paul Malcher, and on the N. NE. by a farm belonging to the heirs of the late J. F. Hamtramck, deceased, and in rear by unconceded lands, containing in superficies 120 acres or arpents French measure; which said tract of land, together with one acre in front by 40 in depth adjoining thereto, was originally granted by Charles Marquis de Beauharnois, gov'r and lieut. gen'l of New France and Louisiana, and by Gilles Hocquart, councillor and intendant of the same, to a certain Jean Casse St. Aubin, pere, by patent, in fee, bearing date at Montreal, the 15th day of July, A. D. 1734; which said grant and concession was afterwards ratified and confirmed by the king of France, by his brevet of ratification, dated the 22d day of February, 1735.

* * * * * * * * * * * * *

At page 106 the record proceeds:

"The following deeds and writings were read as evidence of this claim, viz:

[Here follows a grant or concession from the Marquis de Beauhar-
1229 nois, commander, &c., and Gilles Hocquart, with the aforesaid titles, to Jean Casse St. Aubin, pere, dated at Montreal, the 15th of July, 1734, and a brevet of ratification of said concession by the king of France, dated the 22d of February, 1735, in the same words contained in the like papers embraced in the above claim of Francis Paul Malcher, except as to dates and the boundaries of the tract; and copies of the same are therefore omitted under this claim of Antoine Morass.]

At page 115 the record proceeds:

manner we should find good and convenient, we have, by virtue of the said power of his majesty, given, granted, and conceded to Sieur Francois Fafort Delorme, interpreter for the king at that place, his heirs and assigns, a piece of land of two arpents of front by 20 arpents of rear, (de deux arpents de front sur 20 arpents de profondeur,) adjoining on one side our domain and on the other Francois Bosseron, an extent of land of two arpents of front and twenty arpents of rear, and at the south the great river; which two arpents of front shall be laid out and taken in the rear at the point of the compass N.NW. (N.NO.,) and in case by the allignment that
1217 shall be made there shall be found wanting any land to make up the two arpents.

[The remainder or this grant is in the same language as the foregoing one to Jean Marie Beaubien, and need not therefore be repeated.]

"Done at Fort Ponchartrain the 10th of March, 1707.

(Sig.) LAMOTHE CADILLAC.

Compared with the original minute presented by the Sieur Etienne Verone de Grandmesnil, and at the same time remitted to him by the royal notary of the prevote de Quebec there residing.

Quebec, Aug. 23d, 1742.

(Sig.) LOUET.

Celoron, chevalier de l'ordre militaire de St. Louis, major, commanding at Detroit, Erie, &c.:

On the request made to us by the Sieur Claude Gouin, an habitant at Detroit, to grant him a continuation [of a grant] of lands, 40 arpents
1219 in rear upon 2½ in width (de large,) which he occupies in virtue of the present title papers above appearing, we, in virtue of the power to us given by the general and the intendant, have granted, and do hereby give, grant, and concede to the said Gouin for him, his heirs and assigns, the said continuation of 2½ arpents in width by 40 in rear, (de profondeur,) by means whereof he will injoy sixty arpents in rear (de profondeur) by 2½ arpents wide, (de large,) upon the charge (a la charge) on his part, besides the rents mentioned in said contract, to pay for the benefit of the king annually, the first year expiring on the 11th of Nov. 1751, the sum of 5 pounds to the receiver of the king's domain.

Given at the Strait (au Detroit) the 28th of Feb. 1751.

(Sig.) CELORON,

Navarre, subdelegate of the intendant."

1221 *Felix Peltier's claim, (see vol. 4 of same records, pp. 78, 79, 80, 81, 82, 83, and 94.)*

"On Tuesday, the 4th of Feb., A. D. 1806, the board met at 10 a. m., pursuant to adjournment, and proceeded to the examination of the claim of Felix Peltier, and the notice by him filed with the register of the land office being read in the words following, viz:

The commissioners appointed to investigate the titles to lands in the district of Detroit are hereby notified that I claim to be the real and only owner and proprietor of the tract of land situated on the River Detroit, about one and three quarter miles above the town of Detroit, containing 4 acres *acres* in front by 40 in depth, bounded on the northeast by a farm belonging to Jean B. Chapoton, on the southwest by Jean B. Meloche, in front by the road which runs between the river and the settlements on it, and in the rear by unlocated land, together with all the buildings and improvements
1223 thereon, and the hereditaments and appurtenances thereunto belong-

ing or appertaining. My evidence of title is as follows: [which notice is found in vol. 3 of said records, p. 304.]

[Among the evidences of the claimant's title was a grant or concession from the Marquis de Beauharnois, commander, &c., and Gilles Hocquart, with the aforesaid titles, to Jean Gilbert dit Sans Peur, dated at Montreal, July 9, 1734, and a brevet of ratification of said concession by the king of France, dated Feb. 22, 1735, in the same words contained in the like papers embraced in the above claim of Francis Paul Malcher, except as to boundaries of the tract; and copies of the same are therefore omitted, to be included under the Felix Peltier claim.]

At page 94 the record proceeds:

"And the said claim being fully examined and considered, it is considered by the commissioners that the same be affirmed with a reservation of the rights of interfering claimants being private persons."

1225 *Claim of Antoine Morass, (see vol. 4 of same records, pp. 104 to 110 and 115.)*

"On Monday, the 24th February, 1806, the board met at 10 in the forenoon, pursuant to adjournment, and proceeded to the examination of the claim of the widow and heirs of Antoine Morass, deceased; whereupon the notice by them filed with the register of the land office being read in the words following, viz:

"Detroit, 11 Sept. 1805, the commissioners of the U. S. appointed to investigate the titles to lands in the district of Detroit, pursuant to the act of Congress entitled 'An act making provision for the disposal of the public lands in the Indiana territory and for other purposes,' and also in conformity with the act supplementary thereto, are hereby notified that the subscriber, on behalf of herself as the widow and relict of Antoine Morass, deceased, as well as in behalf of their children, acting as their natural guardian and next friend,

1227 claim title to the following piece of land situated on River Detroit, on north side thereof, containing three acres in front and extending back forty acres in depth; bounded in front by the said river, on the S. SW. by the farm lately owned by William St. Bernard, but now owned by Paul Malcher, and on the N. NE. by a farm belonging to the heirs of the late J. F. Hamtramck, deceased, and in rear by unconceded lands, containing in superficies 120 acres or arpents French measure; which said tract of land, together with one acre in front by 40 in depth adjoining thereto, was originally granted by Charles Marquis de Beauharnois, gov'r and lieut. gen'l of New France and Louisiana, and by Gilles Hocquart, councillor and intendant of the same, to a certain Jean Casse St. Aubin, pere, by patent, in fee, bearing date at Montreal, the 15th day of July, A. D. 1734; which said grant and concession was afterwards ratified and confirmed by the king of France, by his brevet of ratification, dated the 22d day of February, 1735.

* * * * * * * * * * * * * *

At page 106 the record proceeds:

"The following deeds and writings were read as evidence of this claim, viz:

[Here follows a grant or concession from the Marquis de Beauhar-

1229 nois, commander, &c., and Gilles Hocquart, with the aforesaid titles, to Jean Casse St. Aubin, pere, dated at Montreal, the 15th of July, 1734, and a brevet of ratification of said concession by the king of France, dated the 22d of February, 1735, in the same words contained in the like papers embraced in the above claim of Francis Paul Malcher, except as to dates and the boundaries of the tract; and copies of the same are therefore omitted under this claim of Antoine Morass.]

At page 115 the record proceeds:

"And thereupon the said claim, being duly examined and considered, was affirmed with a reservation of the rights of interfering claimants, being private persons."

1231 *George Meldrum's claim, (see vol. 4 of same record, pp. 115 to 118.)*

On Tuesday, the 25th of February, A. D. 1806, the board met at ten in the forenoon, pursuant to adjournment, and proceeded to the examination of the claim of George Meldrum, mentioned in his dotice of Dec'r , 1804, and entered in the 2d vol. of minutes, fol. 236, as follows:

Geo. Hoffman, esq., Reg'r, &c., at Detroit:

SIR: Please take notice that I do enter in your office a farm, on which I now live, consisting of 4 acres in front by 40 in depth, bounded on the front by the River Detroit, on the NE. by Louis Baufait, and on the SW. by Felix Peltier, which farm I bought from Jean B. Chapoton, and he bought
1233 of Charles Andre Barthe, by deed bearing date March 10th, 1768, and Andrie Barthe bought of Nicholas Campau, at public sale, bearing date 6th May, 1759, and to N. Campau by deed from Charles Marquis de Beauharnais, gov'r and lieut. general of New France and Louisiana, by deed bearing date 10th July, 1734.

(Sig.) GEORGE MELDRUM.

And thereupon the evidence adduced by the claimant being also read and considered in the words and figures following, viz:

[Here follows a grant or concession from the Marquis de Beauharnais, commander, &c., &c., and Gilles Hocquart, with the aforesaid titles, to Jacques Campau, pere, dated at Montreal, the 10th of July, 1734. At page 238, vol. II, the comm'rs give fully their reasons for deciding that for want of obtaining a ratification within 2 years, the land reverted to the French government, and were impliedly transferred to Great Britain by the 4th art. of the treaty of Paris, 1763, and to the United States by the definitive treaty of peace, 1783. It seems that the ratification was produced at a subsequent meeting of the board, but their previous decision was, notwithstanding, affirmed. The brevet of ratification also follows said concession by the king of France dated 22d of February, 1735, in the same words contained in the like papers embraced in the above claim
1235 of Francis Paul Malcher, except as to dates and the boundaries of the tract; and copies of the same are therefore omitted, under this claim of George Meldrum.]

At page 117 the record proceeds:

"And thereupon the said evidence having been duly examined and considered, the decision heretofore made concerning this claim was affirmed."

[For the confirmation of this claim see American State Papers, vol. 16, p. 305, referred to by counsel.]

1237 *Appendix document No. 5, being Paris document No. 60.*

Remonstrance by the Chev'r de Repentigny, detailing his losses, and referring to the offers of the British gov'r general, No. 27 in Howard's letter.

Translation.

Extract from the documents preserved in the archives.—Memoranda of military service.—Mr. De Repentigny.

[*Memo.*—This must have been written at the Isle de Re, between 1773 and 1776.—J. M. H.]

MINISTRY OF THE MARINE, &c., OF THE COLONIES, BUREAU OF THE MINISTER.

I entered the service at 13 years of age; I made my debut by a campaign at a thousand leagues from my garrison; it is 33 years since I have been in the service; sixteen campaigns or expeditions of war; twelve battles, affairs, or hot actions, in four of which I commanded in chief, with success. Two sieges; six years employed with the approbation of the generals in command, and negotiations among different nations of Canada. Such, my lord, are my services. In 1632, my great-great-grandfather (Trisayeul) went to Canada, with the charge of accompanying families of his province, in order to establish that colony in which he himself settled. Since that epoch we have furnished to the corps of troops which served there fifty officers of the same name, of which more than one half has perished in the war; my father augmented the number of them in 1733. [My grandfather (Ayeul) was the eldest of 23 brothers, all in the service. My son alone remains of that numerous family.]

The cession of Canada, my country, (ma patrie,) has overturned a fortune more than moderate, which I could preserve only by an oath of fidel-
1238 ity to the new master, which was too hard for my heart.

The offers of the English ministry made to my eldest brother to retain us in their service are an unequivocal proof of the consideration we enjoyed in Canada, a consideration augmented, and I dare say merited, in the last campaigns. Your predecessors, my lord, had in their possession the proposals of the English general to my eldest brother, who is the bearer of them.

In fine, two hundred thousand francs in drafts upon the treasury, (billets de caisse,) a hundred thousand francs in bills of exchange, of which I was bearer, drawn upon the king in 1761, reduced to one hundred thousand francs in 1764, to fifty thousand francs in 1770, by the reduction at 2½ per cent., have just brought me thirty-two thousand five hundred francs last month, by the negociation that I have made of it, fearing to lose all. Such are my sacrifices and my misfortunes in abandoning my country. You made me forget them, my lord; your ministry has given me existence; you have granted me several military favors; my ambition is only to deserve, and be judged worthy of their continuation.

I shall never importune you, my lord, for pecuniary favors; I restrain myself in soliciting your kindness, to put me in the way to sustain myself honorably at the head of my regiment, with which I cannot omit to live all the year round. The officers of the department, those that your orders or the circumstances drive to the garrison, and who are fit to deserve attention, have a right to claim the usual politeness, readiness to oblige
1239 them and the troops which compose it, and from whom I cannot decently turn away.

You have judged, my lord, my salary insufficient. I had the honor to tell you when you had the goodness to enter in explanations with me on the subject last fall, that with a great deal of economy, it could not cost me to live less than 750 to 800 per month; you did not find my expenses too high to meet them. I cannot depend to-day upon my fortune. I have made, my lord, the exact estimate of it.

I would enjoy your favors, my lord, only in part, if I did not share them with Messrs. De Martelly, lieutenant colonel, and De la Perelle, major du regiment.

It is equally essential, even necessary, for the good order and the harmony of the corps, that they live sometimes with the officers, and it is impossible for them to fulfil this obligation without inconvenience, with the salary which they enjoy now. I confine myself to solicit your kindness to

award an augmentation to Mr. De Martelly of one hundred francs per month, and to Mr. De la Perelle of seventy-five livres, per month.

I have the honor to observe to you, my lord, that the regiment de l'Amerique being designed to be the school and the seed plot of the officers and soldiers of the regiments of the colonies, the superior officers who compose it, can not absent themselves from it without strong reasons, that the obligation of residence must occasion them a great deal more expenses than in the other corps. [This must have been written between 1773 and 1776, at the Isle de Re.]

I believe I can assure you, my lord, that until this time we have gone beyond your expectations in the instruction, the discipline, and demeanor
1240 of the regiment de l'Amerique. The marine officers, the superior officers of the garrison of La Rochelle who have seen the regiment under arms, have been astonished at its behavour and its progress in so short a time.

I fear not, my lord, to assure you, that if the state the finances allow you to form a second battallion, which puts us in state to devote ourselves intirely to the instruction of the soldier without fatigue of service, this corps will be on a par with the better disciplined and the better instructed, and will be to you of the greatest service at the first sound of war.

(Signed) REPENTIGNY,
Colonel of the reg't de l'Amerique.

Certified and sealed.

1241 APPENDIX DOCUMENT No. 6.

Letter from Mr. Mercadier, of New York, to Gaspard de Repentigny, 5 Aug., 1798, (No. 53a in Howard's letter.)

Translation.

NEW YORK, *August 5th*, 1798.

SIR: According to the intention that Mr. De Lavigne told me you had of making choice of me and giving me your confidence for the negociation of the sale of the concession made to your father in Canada, and for the reason that this affair is of quite great importance, I believe that you will be glad to know the person who will have it in charge. I take the liberty therefore to write you, in order to announce to you that I will receive with thankfulness the powers that you shall send me, and to indicate to you the persons from whom you will know if you can or not put your confidence upon me. I have exercised the profession of notary at Gaudeloupe during ten years, and I dare flatter myself to be known favorably from all its inhabitants. Mr. De Cambefort, Messrs. Budan Freres, Messrs. Poyen being, from what I presume in relation more direct with you, as your neighbors, may be able to give you some information concerning me.

I have the honor to address you a copy of the brevet of the king which confirmed the concession made to your father at the Falls of St. Marie. You will see on the map of the U. S. that these lands are between the Lake Huron and the Lake Superior, and as far 1,650 miles from New York. Some persons say that the land is good there, others say that it is worth nothing. A sure thing is that the climate is very hard, and that I don't believe that for a long time that country will be inhabited, for the reason of the great quantity of lands for sale on this continent in fertile and populated contries. Thus I consider as one of the most happy hazzards the purchaser who presents himself. The reason which induces Mr. James Caldwell to buy is that he possesses already the other half of the concession that he bought
1242 from Mr. De Bonne, and that in order to avoid the troubles and excessive expenses which would arise from a division to stop the

joint possession, he desires to be proprietor of the whole. He offers 8,100 dollars, payable 3,000 dollars July 14th, 1800, and 5,100 June 2d, 1801. For this amount he will transfer mortgages that he has upon two parcels of land, one of 1,000 acres, the other of 5,100, in the county of Herkemer, State of New York. The mortgaged lands are in the neighborhood of the Mohawe River, which is reputed to be the most fertile contry of that State. I travelled over that country, and I consider it, as everybody agrees, as the best soil of the U. S., equal in quality to that of Ohio. Thus, I estimate as well from my own knowledge as from the advices that I have taken, the security which is offered to you as sufficient. I should desire that the purchaser had been willing to give some cash down; but it is impossible to induce him to do it. He has consented not to part with the mortgages that he offers you during eight months, the time that we have believed necessary to establish to receive your answer, and he bound himself in presence of Mr. Watson to become purchaser. I answered him in your name that, at equal offers, you will award him the preference. The purchaser requires, with reason, that you would send here an act of notoriety proving that you are the only heir of Mr. De Repentigny named in the brevet of concession ; and a power of attorney in which you and Madame De Repentigny shall give a power to sell and to cede all your rights, and particularly those of dower (douaire) or others that you both could have upon that concession. I must observe to you that it is now in the limits of the U. S., notwithstanding that at the epoch of the concession it was in Canada. I will take the liberty to observe to you that the act of notoriety must be signed by the largest
1243 possible number of persons known here, if possible, such as Mr. De Cambefort, &c., mentioning their grades, civil or military, if they possess any. If you had your certificate of baptism, and your certificate of marriage, it would not be bad to have certified extracts of them upon the same paper as the act of notoriety, and to have legalized and sealed all the papers of the "senechal" and the signature of the later, legalized by the governor.

I have the honor to be, sir, your very humble and very obedient servant,

(Signed) JH. MERCADIER,
No. 12 *Pine street.*

P. S.—I think that the power of attorney must contain power to sell to Mr. James Caldwell or any other person for such prices, terms, and conditions the most suitable to your interests, even in money or securities, and if you should be desirous to negociate the mortgages derived of the sale, power to give and transfer to such persons and conditions the most advantageous, all sums of money, with or without guarantee, &c.

1245 APPENDIX DOCUMENT, No. 7.

Answer from Gaspard de Repentigny to Mercadier's letter of Aug. 5th, 1798, (No. 53b in Howard's letter.)

Translation.

Copy of the answer to the letter of Mr. Mercadier, dated August 5th, 1798.

FORT ROYAL, MARTINIQUE, 10*th November*, 1798.

SIR: I received the letter you did me the honor to write me, dated Aug. 5th. The offer of services that you are willing to do me are so arreeble to me, that notwithstanding I have not the honor to know you personally, the reputation which you enjoyed at Guadeloupe inspires me the most just confidence, which is justified by the choice that Mr. De Lavigne has made in,

begging of you to take charge of my affairs. I am much surprised that he had not answered the letter I wrote him, and which he certainly received, because M'de De Lavigne has the answer to that she wrote him inclosed in my package. Yours, sir, makes up the deficiency to the details I was expecting from him, and I know, besides, by M'de De Lavigne, that he has put to this affair the interest and the zeal which would be dictated to him as if it had been that of a brother.

Escaped from the wreck of Guadeloupe with means which supply the wants of my family, I think you will approve the determination I take of not hastening to sell a tract of land which cannot but acquire value in the future. My title papers well proved by his cares, the measures that M'de De Lavigne assured me her husband had taken, the facility that I shall have of having an extract certified of it, the attention that you will be willing to give my interests, all put me in the greatest security, and I will wait in order that the fate of Guadeloupe be decided, the epoch at which I will make a decision.

The proposition that Mr. James Caldwell makes me don't seem to me
1246 very seducing. From what Mrs. De Lavigne told me, he has paid more than 8,100 dollars for the portion which he acquired, and I don't believe that the half which remains to me to day worth less than that which he has bought.

Although at a distance from New England, the relations that we have with that country enables us learn that every day gives value to the lands. Besides, you will admit that the first cash to be received July, 1800, is not an advantage to bring me to a conclusion.

These reflections, sir, are only to answer all the paragraphs of your letter, not being willing to sell at a less advantage.

When the epoch to decide upon the resolution that I will have to take shall come, I am convinced that I shall find competitors who will protect my interests. You may, however, assure Mr. James Caldwell, that he will always have the preference at equal offers.

I beg of you, sir, to continue your cares upon an affair which probably you will terminate sooner or later; to instruct me upon the knowledge you may acquire either as to the value of that land or the persons who should desire to obtain that property.

We expect every day the return of Mr. De Lavigne, who probably will give us the last lights upon this object, which I look upon as important.

Please, sir, to receive my thanks for your offers, and the feelings with which I have the honor to be sir, your very humble, and very obedient servant.

(Signed) REPENTIGNY.

On the back is written in the same handwriting: "My answer to the letter of Mr. Mercadier, dated Aug. 5th, 1798."

1246*a* APPENDIX DOCUMENT No. 8.

Letters from Druilhet to Gaspard, 9 Oct., 1804, and 1st Nov., 1804, (No. 56 in Howard's letter.)

Translation.

PHILADELPHIA, *Oct. 9th*, 1804.

MY DEAR MR. DE REPENTIGNY: And you also I have accused of forgetfulness and indifference, for not having answered the letter which I had the honor of writing to you on the 2nd June last, to render you an account of my interview with Mr. Constable, and which I supposed had reached you, when on my return here I had the sad certainty that the packages which enclosed it had

been thrown into the sea; also I profit by this occasion—which I believe safe for you—to send it in duplicate, to justify myself for the apparent wrongs of negligence which I would not have failed to be guilty in towards you. I would like much to be able to send you one of the letters of Mr. Constable which accompanied mine, but I cannot obtain it just now, because we are three hundred miles apart. But I hope to have that pleasure at the first opportunity, for I will reclaim it of him on my return to New York. Not having heard anything of him since our first conference, I wrote to him twice to know how your affairs stood, and whether any offer had been made. I expect his answer every moment. If it should be negative, and no one had presented himself for the buying of your concession, I think it would be agreeable to your interests to feel (tater) Mr. Cadwell to find out whether he be not still disposed to buy; in that case I would employ Mr. Mercadier, who is still here, and who was the first go-between in this affair. The latter has assured me that this Mr. Cadwell was a very rich and very substantial
1246*b* man, and that the offer of 8,100 which he had made at the time was very advantageous for you. If there be still retained the same intentions, I will engage, saving your approbation, Mr. Constable to sell to him, and in that case I will take as much care that the terms of purchase be to your advantage as I can, and I will get the largest securities for their being punctually fulfilled on their becoming due, for you cannot expect to be able to sell for cash. Thus, my dear Mr. De Repentigny, profit by the first opportunity to give an answer, and to let me know your intentions.

You will doubtless be surprised to learn that after seven years' residence in this country, I am no further advanced with regard to the object of my coming here than on the first day of my arrival. I have not found here the ambassador, and although his coming is daily announced by every ship which arrives from France, and expected momentarily, he does not appear. Notwithstanding all my efforts, I have not been able to obtain anything from the charge d'affaires. He always falls back upon his limited powers and on his hands being bound; perhaps also has he seen that I was the very man who was wanted to General Ernouf, but not the one who would suit him. I reported to the captain general all that I have done, and that I believed he agreed I should do; but have not yet been fortunate enough to learn from him whether my proceedings had merited his approbation. Yes, my dear Mr. De Repentigny, I have not as yet received a single line from government, and I am very sorry for it, because this silence has the appearance of a total abandonment, and of all we wish in the eyes of the authorities of this country. Still, General Ernouf has had the kindness to manifest some interest and con-
1246*c* fidence in me, and I do not think I have forfeited the continuance of these two sentiments. On the contrary, I have made every effort to justify and render myself worthy of them. No matter what happens, I will be none the less tenderly attached to him, and I will always love him with my whole heart. I will prove to him the sincerity of these sentiments if ever an occasion presents itself. I have learnt with much interest from some one coming from Paris, which you will doubtless see, that the government has approved all that he has done for the happiness of the colony which he commands, and that the emperor is very well satisfied with his administration. May he as a recompense let him enjoy long enough his work, and may the inhabitants of Guadeloupe feel the good fortune they enjoy in having such a chief, and never forget the acknowledgment they owe to him who has sent him to them. Nor have I received a single word of souvenir from my friend Mr. Rustugnang, yet I have not received with any the less the greatest satisfaction his confirmation to the prefectship of Guadeloupe; and it is one benefit more, people of Guadeloupe which you owe to General Ernouf, who took care to make known to the emperor the virtues and talents of that en-

lightened and upright administrator, and whom you would doubtless not have had but for him, for there was already another named, and the cabal of Mr. Cascallier had aroused him through before the dispatches of General Ernouf had arrived; Finally, you have nothing more to wish for, and it is to be hoped that you will quickly retire from ten years of oppression and of misfortune. Such is the dearest wish of my heart.

Adieu, my dear Mr. De Repentigny. Offer to Madam De Repentigny the homage of my respect, and to Messrs. De Lameleuse and De Goudrecoure that of my affectionate compliments, and receive as your share the
1246*d* assurance of my sincere and inviolable attachment.

(Signed) DERINTHET.

P. S.—If I have not yet fulfilled your commission of the horses, it is for the best of reasons, and which you will doubtless guess without my telling it to you. It is the same with regard to those of Mr. De Sameleuse. I should be very happy if I could do it before my departure. When you go to Basseterre, would you have the kindness to remember me to Mr. De Noyer, the father and the old lady, and tell them a thousand kind things. Remember me, I beg of you, to your son, whom I salute very affectionately.

1247 Translation.

NEW YORK, *Nov.* 1*st*, 1804.

My Dear Mr. De Repentigny:

I had the honor of writing to you on the 4th ult., and I sincerely hope my letter will have reached you. I enclosed in it a duplicate of the one I wrote to you in June last, and which was thrown into the sea, with the packages under the cover of which it was. In the one and in the other I gave you little hope for the sale of your concession, and I made known to you the motives for this according to the conferences which I had had with regard to this with Mr. Constable. The latter wrote then to you himself, and his letter was enclosed in that one of mine which you did not receive. In my last from Philadelphia I told you that, not hearing anything further from him, I had written to him to learn how your affair stood, and to ask him for the agreement. In case he had not yet received an offer, to write myself to Mr. Caldwell, of Albany, to know if he were not still disposed to buy your property, and on the same conditions which he offered at the time, which, according to the informations I have taken, would be a very advantageous affair for you. On my return to this city I found one of his letters, by which he authorizes me to do all that which I should judge fit for the good of your interests, and manifests the good will to show your powers when I will call for them. You will here find this letter, with a translation which I made you of it. I am about to write to Mr. Caldwell, and whatever may be his answer I will not terminate anything without having received some of your letters. Would you then, my dear Mr. De Repentigny, so soon as you will have received this one let me hear from you, and let me know your last intentions.
1248 I would very much desire to be able to terminate this affair for you and to your satisfaction, and give you in this circumstance a proof of my zeal for as much as concerns you. If I am fortunate enough to succeed in this, believe me that if I cannot obtain ready money I will omit nothing to procure short terms for you, with good and valuable guarantee, and which can assure the payment on their falling due. I understand the laws of the country, the people who inhabit it, and I will not be backward otherwise in taking counsel so that you may never regret having confided to me your interests.

Adieu, my dear Mr. De Repentigny; I wish you always the best of health,

a good harvest, and beg of you never to doubt of the truth of my sentiments for you.

Your very aff'ate servant and friend,

(Signed) DERINTHET.

P. S.—Permit that Madam De Repentigny may here find the homage of my respect, and Messrs. De Sameleuse and De Goudrecoure that of my kind civilities.

When you go the Basseterre can I presume to beg of you to lay at the feet of General Ernouf the homage of my sentiments, and the assurance that I will never cease loving him with with all my heart, and for himself alone. Would you do the same kind office for me to Madam Ernouf, supposing that a like homage would not displease her, and begging her pardon for the liberty I take in offering it to her. I fear I had the awkwardness to not perfectly fulfil a part of the commissions which she was good enough to charge me with, since she has not let me hear a word with regard to this.

I will not forget your commissions for the horses, and that of Mdlle De Sameleuse, if it lies in my power to fulfil them.

1249 SCHENECTADY, ON THE NORTH RIVER, *Sept.* 28*th*, 1804.

SIR: Your last letter, dated the 19th inst., reached me only to-day. I have not been able to do anything in the disposal of Mr. Repentigny's property, and it would give much pleasure if you would succeed by application to Mr. Caldwell, of Albany, or any other person; but I have little hope for some time to come. If you think it advisable to try him I can have no wot of objection, and I will very willingly show my authorities from Mr. Repentigny whenever applied to.

I am, with regard, your most ob'nt and h'ble serv't,

(Signed) J. CONSTABLE.

DERINTHET, *New York.*

1251 APPENDIX DOCUMENT No. 9.

Deed.—Jean B. Cadotte to Jean B. and Michel Cadotte, 24 May, 1796, (No. 57 in Howard's letter.)

Translation.

Was present Jean B. Cadotte, father, who, aware of his indisposition and great age, recognizing the filial love shown him by J. Bt. Cadotte and Michael Cadotte, his legitimate sons, in consideration of the paternal love he bears them, as by these presents, made a donation *inter vivos*, pure, simple, and irrevocable, and promises to guarantie from all troubles, debts, alienations, and other incumbrances whatever, to the said Jn. Bt. Cadotte and Michael Cadotte, his legitimate sons, present and accepting the same for themselves, their heirs and assigns, the parcel of land bordering on one side upon Mr. Jean Bt. Nolin, on the other upon a man named Francois Champau, comprising herein the houses, sheds, animals, &c., &c., &c.

This donation is made for the consideration and upon the charge that the said Jean Bt. and Michael Cadotte have promised and obliged themselves jointly and severally, the one for the other, to the said Sieur Jean Bt. Cadotte, their father, to take care of him during his life, as well in health as in sickness, by means of an annual support (pension) in a place where they may have the consolation of seeing him pass his days agreeably.

Done and passed at the Sault St. Marie, the year and day hereunder men-

tioned. The said Jean Baptiste Cadotte, the father, not knowing how to sign his name, has voluntarily made his ordinary mark.

Sault St. Mary, 24 May, 1790.

(Signed) JEAN BAPTISTE $\overset{\text{le}}{\underset{\text{marque.}}{\bowtie}}$ CADOTTE.

Witnesses: J. B. NOLIN,
JOHN JOHNSTON.

1253 Appendix document No. 10, (official map of the private land claims at the Sault Ste Marie, 6 July, 1823, (No. 58 in Howard's, letter,) sent forward to Washington for the use of the U. S. Supreme Court under rule No. 8 [3.]

1255 APPENDIX DOCUMENT No. 11.

Surveyor's computation, according to Franquet's scale, (No. 70 in Howard's letter.)

The counsel for the U. States verbally admitted, in evidence on the trial, the following statement of a Mr. Monroe, a practical surveyor at Detroit, who, as was admitted, had measured the distance on the "Franquet map," attached to the deposition of Morin, and *and* which said Morin deposes he copied from the original in Paris; which statement was read in evidence by the petitioners' counsel without objection:

"I have carefully computed the distance on the Franquet map from the west side of Waiska Bay to the west line of the seigniory at the narrowest point, and find the same as follows, as per scale on the map: (Scale $\frac{3}{8}$ inch to a league;) the distance is 61 ch's, 3 li'ks, 84."

1257 Appendix document No. 12, official map of 4 townships to illustrate the position of Waiskey Bay, (No. 71 in Howard's letter,) sent forward to Washington for the use of the U. S. Supreme Court under rule No. 8 [3.]

Appendix document No. 13, 10 official maps of 15 townships, (No. 72 in Howard's letter,) sent forward to Washington for use of the U. S. Supreme Court under rule No. 8 [3.]

1259 APPENDIX DOCUMENT No. 14.

1st deed, M'me Repentigny to Christie, 8 April 1766, (part of No. 73, in Howard's letter.)

Translation.

Recorded into the register's office, in Quebec, on Wednesday, 16th August, 1769, at twelve o'clock at noon, and recorded in the said office on Thursday, 17th August, 1769, at three o'clock in the afternoon, in the English reg'r, letter E, page 17.

GEO. ALSOPP, *D. Reg'r.*

Whereas it is to-day firmly by these presents made, concluded, and agreed between Mrs. Mary Magdalen Chausse Gros de Levy, wife and attorney in fact of Mr. Le Gardeur Chevalier de Repentigny, esquire, of the one part, and the Lieutenant Colonel Gabriel Christie, deputy quartermaster general of the troops of his majesty in America and captain in the forty-eighth regiment of infantry, of the other part—the two parties dwelling at present in the city of Montreal, in Canada; that is to say, the said Mary Magdalen

Chausse Gros de Levy, wife and attorney in fact of Mr. Le Gardeur Chevalier de Repentigny, esquire, intending to leave and quit Canada, has by these presents sold, granted, quitclaimed, transferred, and released henceforth and forever, has promised and promises to guarantee free from all troubles, gifts, doweries, debts, mortgages, evictions, alienations, substitutions, and all other hindrances generally, whatsoever they may be, to the Lt. Colonel Gabriel Christie, deputy quartermaster general of his majesty's troops and captain of the forty-eighth regiment of infantry, and to his heirs and as-
1260 signs forever, the seigniory of La Chenaye, containing one hundred and forty arpens in front by six leagues in depth, bounded on side by the seigniory of Terre Bonne, and on the other side by that of the Assumption, fronting on the River La Chenaye, and in the rear extending back to the lands not conceded according to the act of separation, dated at Montreal, the second of May, in the year seventeen hundred and fifty, before the notaries Bouron, and signed by him, with the domains, rights, and high, and middle, and low justice memorial and seigniorial rents, fines, (lots,) and sales, flour and saw mill, a stone house, and other buildings, and other prerogatives annexed to the said seigniory, without excepting reserving or retaining anything therefrom in any whatsoever might be possible; and the said vendor granting to the said Lieutenant Colonel Christie, present purchasor, his heirs and assigns, all the rents due from the aforesaid seigniory since the day of the feast of St. Martin, being the eleventh day of November, of the year one thousand seven hundred and sixty-five, and fines (lots) and sales due by the tenants (habitans) since the date of these presents; and the said vendor, Mrs. Mary Magdalen Chausse Gros de Levy, confirms and transfers, in its whole extent, all the rights, privileges, acts of separation, (proces verbaux de seperation,) claims on the fief of Mr. Martel, immunities, advantages, acts, and titles, and claims, as fully set forth in the act of sale at the time of the purchase of the said seigniory of La Chenaye, dated at Montreal, in the year one thousand seven hundred and sixty-four, according to the copy of the notary signed Panet, as well as all other right appertaining to the said seigniory of La Chenaye contained in any other or any preceding original grant or any other papers whatsoever, to said Lieutenant Colonel
1261 Christie, his heirs and assigns aforesaid, in virtue of her being the purchasor in possession, and in virtue also of the power of attorney given to her by the aforesaid Chevalier de Repentigny, bearing date the twenty-fifth day of March, in the year one thousand seven hundred and fifty-nine, left in the hands of Mr. Panet, notary, on the tenth of August of the same year, according to his copy, at present remitted to the purchasor. The present sale made by the said Lieutenant Colonel Christie, purchasor, at the charge of the rights and feudal duties of which the said seignory is holden from his Brittanic majesty and successors royal, in perpetuity, nevertheless quit of the said rights of the whole past up to this said day, and quit of all other demands whatsoever for the future. And further, for and in consideration of the price and sum of one thousand seven hundred and fifty pounds sterling, money of Great Britain, supposed to be equal to forty thousand (livres tournois) francs of France; that is to say, twelve hundred pounds lawful money of Great Britain, for the seignory, with one hundred and twelve pounds ten shillings sterling for (les epingles) pin money, and four hundred and thirty-seven pounds ten shillings, lawful money of Great Britain, for a wind-mill, a saw-mill, a stone house, another house of logs, (maison de pieces sur pieces,) as well as other houses or buildings, commodities for the building of a flour-mill, and the millstones on the ground, at which sum they have been appraised by the parties, and at the price for which the said lady has bought the said seignory. And for payment of the said sum

1262 of one thousand seven hundred and fifty pounds sterling, or forty thousand francs, the said Lieutenant Colonel Christie, present purchasor, has presently remitted to the said vendor a letter of change or note, payable to the said vendor or to her order, in London, at ten days' sight after the first of October next; and for surety of the payment duly made, the said purchasor has mortgaged the said seignory, and to the charges above recited the said vendor has sold and transferred to the said Lieutenant Colonel Christie, purchasor, all the rights and dependancies, understanding that they should enjoy, do, and dispose of them as will seem to them good, and the said Mrs. Mary Magdalen Chausse Gros de Lery, above mentioned, as well as her husband, Mr. Le Gardeur Chevalier de Repentigny, esquire, in consequence of the power of attorney in fact above mentioned, and all those having interest therein, engage and oblige themselves to sign any other copy or act on parchment in favor of the said Lieutenant Colonel Christie, his heirs and assigns, in the true intention and signification of these presents, in English, according to the form of the English laws, as soon as it will be presented to them, and to do therein all things belonging to it or adjudged necessary, so as better to enlighten or bind the purchasor and the vendor according to the true intention and meaning of these presents.

In faith of which, the said Mary Magdalen Chausse Gros de Lery has this day, this eighth day of April, one thousand seven hundred and sixty-six, at Montreal, in Canada, signed and sealed these presents.

(Signed) LERY REPENTIGNY. [L. S.]
G. CHRISTIE.

1263 Sealed and delivered, being firstly duly stamped, in our presence, who have seen these words "according to the act of separation, dated at Montreal, the second of May, in the year one thousand seven hundred and fifty, before the notaries Bourvon, and signed by him" interlined before the signature, &c.

Witness: LA COME ST. LUC.
JACQUETTE GUILLIMIN.

The foregoing is a true copy of the original registered and examined by—
GEO. ALLSOPP, *D. Reg'r.*

1265 APPENDIX DOCUMENT No. 14.

2d deed, Chev. de Repentigny to Christie, 27 Oct., 1766. (part of No. 13 in Howard's letter.)

Recorded into the register's office, in Quebec, on Wednesday, 16th August, 1769, at twelve o'clock at noon, and recorded in the said office on Wednesday, 30th August, 1769, at eleven o'clock in the forenoon, in the English register, letter E, page 20.

(Signed) GEO. ALLSOPP, *D. Reg'r.*

This indenture, made the twenty-seventh day of October, in the seventh year of the reign of our sovereign lord, George the Third, by the grace of God of Great Britain, France, and Ireland, king, defender of the faith, and so forth, and in the year of our Lord one thousand seven hundred and sixty-six, between Louis le Gardeur, knight of Repentigny, esquire, also formerly of the town of Montreal, in Canada, in North America, but now of Paris, in the kingdom of France, one of the younger grandsons of Peter Gardeur, esquire, late master of Repentigny, deceased; Dame Mary Magdelan Chausse Gros de Lery, wife of the said Louis le Gardeur, and Peter le Gardeur

esquire, master of Repentigny, formerly of the town of Montreal, aforesaid, but now of Paris, in the kindom of France, aforesaid, eldest grandson of the said Peter le Gardeur, deceased, of the one part, and Gabriel Christie,
1266 of the parish of Saint Ann, Westminster, in the county of Middlesex, esquire, lieutenant colonel in his majesty's army, of the other part, witnesseth, that for and in consideration of the sum of five shillings, of lawful money of Great Britain, to the said Louis le Gardeur, knight of Repentigny, Dame Mary Magdelan Chausse Gros de Lery, and Peter Legardeur, esquire, master of Repentigney, in hand paid by the said Gabriel Christie at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged; they, the said Louis le Gardeur, knight of Repentigny, Dame Mary Magdelan Chausse Gros de Lery, and Peter le Gardeur, esquire, master of Repentigny, have, and each and every of them hath, bargained and sold, and by these presents do, and each and every of them doth, bargain and sell, unto the said Gabriel Christie all that the seignory of La Chenay, containing one hundred and forty arpents or acres, measure of France, in front, and six leagues in depth, joining on one side of the seignory of Terrebonne, and on the other side to the seignory of L'Assomption, fronting the River La Chenay, and in the rear or depth adjoining the lands that were not granted out according to a deed or act of separation dated at Montreal, the second of May, one thousand seven hundred and fifty, before the notary, Bouron, with the domains, rights, high, middle, and low justice, ground-rent, and seigniors' rent, lots, and vente grist-mill and saw-mill, store-
house, and other buildings and other prerogatives annexed to the said
1267 seignory, and also all the rights, privileges, process verbal of separation, pretensions on the fief of Mr. Martel, immunities, advantages, deeds, and titles, and pretensions mentioned or expressed in a certain deed bearing date at Montreal, in the year one thousand seven hundred and sixty-four, and all other rights belonging to the said seignory of La Chenay contained in any other or former original grants or papers whatever, together also with all and singular barns, stables, houses, outhouses, mills, millstones, edifices, buildings, and conveniences for building, orchards, lands, meadows, pastures, feedings, commons, woods, underwoods, moors, marshes, wood grounds, ways, paths, waters, watercourses, rivers, fishing places, easements, profits, advantages, improvements already made or to be hereafter made on the said seignory, and tract of land and premises, and also all and singular other the lands, tenements, and hereditaments of them, the said Louis le Gardeur, knight of Repentigny, and Mary Magdelan Chausse Gros de Lery, and Peter le Gardeur, master of Repentigny, parties to these presents, any or either of them mentioned and comprised in certain deeds or instruments of the year one thousand seven hundred and sixty-four, and the eighth day of April, one thousand seven hundred and sixty-six, and thereby or by either of them executed, sold, released, and transferred, respectively, or intended so to be, with the appurtenances thereunto belonging or
1268 in anywise appertaining or therewith used, occupied, or enjoyed, or accepted, reputed, taken, or known as part, parcel, or member thereof, and the reversion and reversions, remainder and remainders, rents, issues, and profits of the said premises hereby bargained and sold and every part and parcel thereof. To have and to hold the said seignory and tract of lands, domains, high, middle, and low justice ground rent, seignors' rent, lottes ventes, mills, houses, buildings, tenements, and hereditaments, and all and singular other the premises hereby bargained and sold and every part and parcel thereof, with their and every of their appurtenances, unto the said Gabriel Christie, his executors, administrators and assigns, from thence next ensuing and fully to be complete and ended; yielding and paying therefore unto the said Louis le Gardeur, knight of Repentigny, Dame Mary Magdelan

Chausse Gros de Lery, and Peter le Gardeau, esquire, master of Repentigny, their heirs and assigns, the rent of one peppercorn at the end of the said term, (if the same shall be lawfully demanded,) to the intent and purpose that by virtue of these presents and of the statute for transferring uses into possession the said Gabriel Christie may be in the actual possession of the said premises hereby bargained and sold, and be thereby enabled to accept and take a grant and release of the reversion and inheritance of the same premises to and to the use of him, his heirs and assigns.

In witness whereof the said parties to these presents have hereunto
1269 set their hands and seals the day and year first above written.

(Signed) LOUIS LE GARDEUR CH'R REPENTIGNY.
MARIE MADELEINE CHAUSSE GROS DE LERY.
PIERE LE GARDEUR DE REPENTIGNY.

Sealed and delivered by the within-named Dame Mary Magdelan Chauss Gros de Lery (being first duly stampt) in the presence of us.

(Signed) FRAN'S MACKAY.
CHA'S BIGGS.

Sealed and delivered by the within-named Louis le Gardeur, knight of Repentigny, and Peter le Gardeur, master of Repentigny, (being first duly stampt) in the presence of us.

(Signed) JACQUES LEMOINE, *Temoin.*
CUROT, *Temoin.*

1273 APPENDIX DOCUMENT No. 14.

3rd deed, Chev'r de Repentigny to Christie, 28 *Oct.,* 1766, (*part of No.* 73 *in Howard's letter.*)

This indenture, tripartite, made the twenty-eighth day of October, in the seventh year of the reign of our sovereign lord, George the Third, by the grace of God of Great Britain, France, and Ireland, king, defender of the faith, and so forth, and in the year of our Lord one thousand seven hundred and sixty-six, between Louis le Gardeur, knight of Repentigny, esquire, also formerly of the town of Montreal, in Canada, in North America, but now of Paris, in the kingdom of France, one of the younger grandsons of Peter le Gardeur, esquire, late master of Repentigny, deceased, and Dame Mary Magdelan Chausse Gros de Lery, wife the said Louis le Gardeur, of the first part, Peter le Gardeur, esquire, master of Repentigny, formerly of the town of Montreal, aforesaid, but now of Paris, in the kindom of France, aforesaid, eldest grandson of the said Peter le Gardeur, deceased, of the second part, and Gabriel Christie, of the parish of Saint Ann, Westminster, in the county of Middlesex, esquire, lieutenant colonel in his majesty's army, of the third part. Whereas, before the late treaty of peace between this kingdom and France, by which the province of Canada, in North America, was ceded to Great Britain, and whilst the province remained under the dominion of France, the company of New France by a certain deed or instrument in writing in the French language, and duly made and executed accord-
1274 ing to the French laws, in the general assembly of the members of the said company, held in the office of the said company, at Paris, the sixteenth day of April, which was in the year of our Lord one thousand six hundred and forty-seven, did give, grant, and cede to Peter le Gardeur, the grandfather, since deceased, by the name of Peter le Gardeur, esquire, master of Repentigny, the lands and places following; that is to say, four leagues of land, to be taken along the River Saint Lawrence on the north side, adjoining on one part to the lands theretofore granted to Messrs. Cherrier and

Royer, going up along the said River Saint Lawrence from the landmark that should be put between the lands of the said Cherrier and Royer and those ceded by the grant now in recital, to the extent of the said space of four leagues, at which place should be put another landmark on the said ground, the extent of the said four leagues in breadth and in depth, six leagues to be enjoyed by the said master of Repentigny, his successors and assigns, with all rights, property, jurisdiction, and seignory, and to hold the things above said, that faith and homage by him, his successors or assigns, should be obliged to pay to the fort of Saint Louis at Quebec, in New France, or other places that might be thereafter appointed by the said company, which faith and homage they should be obliged to pay on every change of seignors and to pay all rights and duties that might happen to be payable for
1275 a fief of that quality, the whole according and conformable to the custom of Paris, which custom the company declared they intended should be kept and observed everywhere in New France, and upon condition that the appeals of the judges that might be established on the place should be under the jurisdiction of the parliament and the sovereign court, that should be thereafter explained, in the name of the said company, at Quebec or elsewhere in New France; nevertheless, the master of Repentigny, his successors or assigns, or any of the said inhabitants should not hinder the course of the River Saint Lawrence or other rivers that might be found upon the said lands above ceded, and should leave a high road along the said River Saint Lawrence of twenty toises or fathoms in breadth to begin from the river side in manner that it should be well risen to the lands nigh it, and under certain other reservations in the said grant mentioned, as by the said in part recited grant, relation being thereunto had, may more fully and at large appear.

And whereas the said seignory was afterwards called or named the Seignory of La Chenay, and the same, together with divers lands parcel, of the said grant, and to the amount or extent of one moiety or half part of the said whole, grant by descent and mesne conveyances, as hereinafter is more particularly mentioned, became vested in the said Peter le Gardeur,
1276 party to these presents in absolute property to him and his heirs forever.

And whereas, by a certain deed or instrument in writing in the French language, bearing date at Montreal aforesaid, in the year of our Lord one thousand seven hundred and sixty-four, duly made and passed before the notaries royal of the said town of Montreal according to the French form used in Canada, the said Peter le Gardeur, party to these presents by the name and description of Mr. Peter le Gardeur, master of Repentigny, knight of the royal and military order of Saint Louis, captain of his most catholic majesty's troops, living in the town of Montreal, reciting that he had a mind to go to France, and therefore, as allowed by the late treaty of peace, to dispose of his land, did by the said deed now in recital sell, cede, quit, transfer, and relinguish forever, and warrant free of and from all troubles, gifts, jointures, debts, mortgages, evictions, alienations in tail, and all other incumbrances and all other impediments generally whatever, unto the said Dame Mary Magdalen Chauss Gros de Lery, the wife of the said Louis le Gardeur, knight of Repentigny, and his attorney lawfully constituted by him for that purpose, as therein is mentioned, and who was then accepted purchasor for her said husband and herself, their heirs, and assigns, the seignory of La Chenay, containing one hundred and forty arpents in front and six leagues in depth, adjoining on one side to the seignory
1277 of Terrebonne, and on the other side to the seignory of Assumption fronting the River Le Chenay, and the depth or rear adjoining to lands that were not then granted out, together with the domains, rights, high,

middle, and low justice, ground rent, and seignor's rent lots and vente grist-mill and saw-mill, and other prerogatives annexed to the said seignory without excepting, reserving, or retaining anything, and the said seller made over to the said (dame) the purchasor even the averages of rents and lots and ventes that might be due by the inhabitants of the said seignory for the time past to that day, and also the pretensions or claims he might have upon the fief of Martel and other rights whatever, and in the said deed or instrument now in recital it is mentioned that the said seller of La Chenay as follows, that is to say, one half whereof having fell to him from the successions of the then late Mr. Peter le Gardeur of Repentigny, and of Dame Agatha Saint Pair, his ancestors by representations of Mr. John Baptiste le Gardeur of Repentigny, his father, according to the dividend he made between him and his joint heirs before Mr. Bouron, notary, the second of May, one thousand seven hundred and fifty, and the other moiety thereof by his having the right thereto made over to him by Daniel Louis and Francis le Gardeur of Repentigny, his brothers, by contract, made before Mr. Sailliant, notary of Quebec, the thirteenth of April, one thousand seven hundred and *and* fifty-three, and Daure de Blanzy,
1278 notary in the said town of Montreal, the same day and year, a copy of which was delivered to the said dame, the purchaser, and in the said deed or instrument now in recital it is mentioned, and to which said late Mr. Peter le Gardeur of Repentigny the said seignory did belong, and contained a greater quantity of land as adjudged by sentence pursued by warrant upon the succession of the said then late Mr. Martell, issued in the jurisdiction of the said town of Montreal, the third of May, one thousand seven hundred and fifteen, a copy whereof, duly infeoffed for the means of the payment of the quint, with a deed of agreement made between the said seller and the late Mr. Louis de la Corne, which settled the time of separation between the seignories of Terrebonne and La Chenaye, before Mr. Bouron, notary, of the thirtieth April, one thousand seven hundred and fifty-three, and a process verbal drawn up by Mr. Pellideau, land surveyor, the twenty-seventh April of the same year, and a figured plan made by the same land surveyor the sixteenth March preceding, and a contract of sale agreed by Mr. Louis le Gardeur, knight of Repentigny, and Mr. De Repentigny, seller of his part in the domain of La Chenaye, the tenth April of the same year, made before the said Bouron, notary, and a process verbal of separation of the said seignory of La Chenay from that of L'Assumption, made by Messrs.
Pellideau and Raymond, land surveyors, in the month of February
1279 then last before the date of the said deed now in recital had been then delivered to the said dame, the purchasor, and it is thereby declared that the said sale was made subject to the feodal rights and duties that belonged to his majesty the king of Great Britain and his successors, and that the said sale was made for and in consideration of the sum of forty thousand livres tournois, money of France, viz: thirty thousand livres for the seignory and ten thousand more for a wind-mill, saw-mill, a storehouse, and another logg-house, with some other buildings upon the said seignory, at which sum the same had been valued by the parties, which was to be paid as therein is mentioned, and the said seller did thereby sell and make over to the said dame, purchasor, and her husband all right and property into or upon the said seignory and its dependancies thereto belonging, that they might enjoy, make, and dispose thereof as they should think proper, as by the said deed or instrument now in recital, relation being thereunto had, may more at large appear.

And whereas the said Peter le Gardeur, party to these presents, was duly paid and satisfied the said forty thousand livres, the purchase moneys.

And whereas by one other deed or instrument in writing, in the French

language, and duly made and executed according to the French form used in Canada, bearing date at Montreal aforesaid on or about the
1280 eighteenth day of April, one thousand seven hundred and sixty six, and made between the said Dame Mary Magdelan Chausse Gros de Lery, wife of the said Louis le Gardeur, knight of Repentigny, and his attorney for that purpose duly authorized, of the one part, and the said Gabriel Cristie, by the name and description of Lieutenant Colonel Gabriel Christie, deputy quartermaster general of his majesty's forces in America, and captain in the forty-eighth regiment of foot, of the other part, both parties then residing in the town of Montreal, in Canada, she, the said Dame Magdelan Chausse Gros de Lery, wife and attorney to her said husband as aforesaid, having a mind to quit and leave Canada, did sell, yield, quit, make over, and relinquish forever, and warrant of and from all troubles, gifts, jointures, debts, mortgages, evictions, alienations entail, and all other impediments generally whatever, to the said Gabriel Christie, and to his heirs, and assigns, the said seignory of La Chenay, and all and singular the lands, rents, lottes, ventes, mills, buildings, and all and singular other the hereditaments and premises, with the appurtenances in and by the said recited deed or instrument, dated at Montreal, in the year one thousand seven hundred and sixty-four, mentioned to be granted, sold, and transferred, and hereinafter in and by these presents granted and released, and the said Dame
1281 Mary Magdelan Chausse Gros de Lery did thereby confirm and make over, in its fullest extent, all the rights, privileges, process verbal of separation, pretensions on the fief of Mr Martel, immunities, advantages, deeds, and titles, and pretensions, as fully recited in a deed of sale at the time she purchased the said seignory of La Chenay, bearing date at Montreal, in the year one thousand seven hundred and sixty-four, according to the notarial copy signed, as well as all other rights belonging to the said seignory of La Chenay contained in any other or former original grants or papers whatsoever, to the said Gabriel Christie, his heirs and assigns aforesaid, by virtue of her being the purchaser, possessor, and also by virtue of the power of attorney given her by the knight of Repentigny, bearing date the twenty-fifth day of March, in the year one thousand seven hundred and fifty-nine, left in the hands of Panet, notary, the tenth day of August in the same year, according to the copy then delivered, and it was thereby declared that the said sale was made subject to the feodal rights and duties that belonged to his majesty the king of Great Britain and his successors forever, nevertheless quit of all the said right for all the time then past to the day of the date of the said deed or instrument now in recital, and quit of all other demands whatever thereafter, and that the said sale was made for and in consideration of the sum of one thousand
1282 seven hundred and fifty pounds sterling, money of Great Britain, computed to be equal to forty thousand livres tournois of France, viz: one thousand two hundred pounds lawful money of Great Britain, for the seignory, with one hundred and twelve pounds ten shillings sterling for pin money, and four hundred and thirty-seven pounds ten shillings lawful money of Great Britain, for a wind-mill, saw-mill, storehouse, and logg-house, as well as other houses, conveniences for building a water grist-mill and millstones on the spot, at which sum they were valued by the parties and at the prices the said dame bought the said seignory, and that for the payment of the said one thousand seven hundred and fifty pounds sterling or forty thousand livres, the said Gabriel Christie then gave to the said seller or to her order, in London, at ten days' sight after the first of October, one thousand seven hundred and sixty-six, and for security of the said payment the said buyer mortgaged the said seignory, and upon the above condition the said seller did thereby sell and make over to the said Gabriel Christie, the pur-

chaser, all the rights and dependencies consisting, that he might enjoy the same and dispose thereof as he should think proper, and the said Dame Mary Magdelan Chauss Gros de Lery did thereby bind and oblige herself as well as her said husband, in consequence of the power of attorney aforesaid, and all others concerned, to sign any other deed on parch-
1283 ment in favor of the said Lieutenant Colonel Gabriel Christie, his heirs, or assigns, to the true intent and meaning of the said deed now reciting in English according to the form of the English law as soon as the same should be presented to her, and to do all things thereunto belonging or judged necessary, so as more fully to explain or bind down the buyer and seller according to the true intent and meaning of the said deed or instrument now in recital, as by the said deed or instrument, relation being thereunto had, may more fully appear.

And whereas the said bills or notes given by the said Gabriel Christie to the said Mary Magdelan Chausse Gros de Lery for the purchase of the said seignory and premises are now become due, and the said Gabriel Christie is ready and willing to pay and discharge the same upon having good and sufficient conveyances and assurances in law, according to the form used in Great Britain, made to him, and his heirs and assigns, of the said seignory hereditaments and premises so sold to him by the said Mary Magdelan Chausse Gros de Lery, the wife and attorney of her said husband, and all proper parties joining therein, and to which they having consented and agreed:

Now this indenture witnesseth, that in pursuance of the said agreement, and for and in consideration of the sum of one thousand two hundred pounds of lawful money of Great Britain for the said seignory, and one hun-
1284 dred and twelve pounds ten shillings sterling for pin money, and four hundred thirty-seven pounds ten shillings for a wind-mill, saw-mill, storehouse and log-house, as well as other houses and conveniences, the said several sums making together in the whole the sum of one thousand seven hundred and fifty pounds of good and lawful money of Great Britain to the said Louis le Gardeur, knight of Repentigny, in hand well and truly paid by the said Gabriel Christie at or before the sealing and delivery of these presents in full for the absolute purchase of the said seignory of La Chenary and premises hereinafter mentioned to be granted and released, the receipt of which said sum of one thousand seven hundred and fifty pounds he, the said Louis le Gardeur, knight of Repentigny, doth hereby acknowledge and thereof and therefrom, and of and from any part and parcel thereof, severally acquit, release, and discharge the said Gabriel Christie, his heirs, executors, and administrators, and every of them forever by these presents. And also in consideration of the sum of ten shillings of lawful money of Great Britain to the said Peter le Gardeur, master of Repentigny, party to these presents, in hand well and truly paid by the said Gabriel Christie, at or before the sealing and delivery of these presents, the receipt whereof the said Peter le Gardeur, master of Repentigny, doth hereby acknowledge, and thereof and therefrom acquit, release, and discharge the said Gabriel Christie, his heirs, executors, and administrators, and every of them
1285 forever by these presents. They, the said Louis le Gardeur, knight of Repentigny, and Dame Mary Magdalen Chausse Gros de Lery, his wife, and also the said Peter le Gardeur, master of Repentigny, party to these presents, at the request and by the direction of the said Louis le Gardeur, knight of Repentigny, and Mary Magdalen Chausse Gros de Lery, his wife, testified by their being parties to and executing these presents, have, and each and every of them hath granted, bargained, sold, aliened, remised, released, and confirmed, and by these presents do, and each and every of them doth, absolutely grant, bargain, sell, alien, remise, release, and confirm,

unto the said Gabriel Christie in his actual possession now being by virtue of a bargain and sale to him thereof, made by the said Louis le Gardeur, knight of Repentigny, and Dame Mary Magdalen Chausse Gros de Lery, his wife, and the said Peter le Gardeur, esquire, master of Repentigny, in consideration of five shillings by indenture, bearing date the day next before the day of the date of these presents for the term of one year, commencing from the day next before the day of the date of the said indenture of bargain and sale, and by force of the statute made for transferring uses into possession, and to his heirs, all that the said seignory of La Chenay, containing one hundred and forty arpents or acres, measure of France, in front and six leagues in depth, joining on one side to the seignory of Terrebonne, and on the other side to the seignory of L'Assomption, fronting the River La Chenay, and in the rear or depth adjoining the lands that were not granted out according to the said deed or act of separation, dated at Montreal, the second of May, one thousand seven hundred and fifty before the notary Bouron, with the domains, rights, high, middle, and low justice, ground-rent, and seignors' rent, lots, and vente, grist-mill, and saw-mill, the storehouse and other buildings, and other prerogatives annexed to the said seignory; and also all rights, privileges, process verbal of separation, pretentions on the fief of Mr. Martel, immunities, advantages, deeds, and titles and pretentions mentioned or expressed in the said recited deed, bearing date at Montreal, in the year one thousand seven hundred and sixty-four, and all other rights belonging to the said seignory of La Chenay, contained in any other or former original grants or papers whatever, together also with all and singular barns, stables, houses, out-houses, mills, millstones, edifices, buildings, and conveniences for building, orchards, lands, meadows, pastures, feedings, commons, woods, underwoods, moors, marshes, wood grounds, ways, paths, waters, watercourses, rivers, fishings places, easements, profits, advantages, improvements already made or to be hereafter made on the said seignory and tract of land and premises; and also all and singular other the lands, tenements, and hereditaments of them, the said Louis le Gardeur, knight of Repentigny, and Mary Magdelan Chausse Gros de Lery, and Peter le Gardeur, master of Repentigny, party to those presents, any or either of them mentioned and comprised in the said deeds or instruments hereinbefore recited, of the year one thousand seven hundred and sixty-four, and the eighth day of April, one thousand seven hundred and sixty-six, and thereby or by either of them granted, sold, released, and transferred, respectively, or intended so to be, with the appurtenances thereunto belonging or in anywise appertaining, or therewith used, occupied, or enjoyed, or accepted, reputed, taken, or known as part, parcel, or member thereof, and the reversion and reversions, remainder and remainders, rents, issues, and profits of all and singular the said premises and every part and parcel thereof, with the appurtenances, and also all the estate, right, title, interest, use, trust, property, profit, claim, and demand whatsoever, in law or equity, or otherwise howsoever, of them, the said Louis le Gardeur, knight of Repentigny, and Mary Magdelan Chausse Gros de Lery, his wife, and Peter le Gardeur, master of Repentigny, party to these presents, or any or either of them, of, into, or out of the said premises, every or any part or parcel thereof, and also all deeds, evidences, and writings touching or concerning the said premises or any part thereof, only and true copies of all other deeds, evidences, and writings which concern the said premises, or any part thereof, jointly with any other lands or tenements now in the custody or power of them, the said Louis le Gardeur, kight of Repentigny, and Mary Magdelan Chausse Gros de Lery, his wife, and Peter le Gardeur, master of Repentigny, party to these presents, or any or either of them, or which they or any or either of them can or may come by without

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suit in law or equity, the same copies to be made, taken or written at the proper costs and charges of the said Gabriel Christie, his heirs and assigns. To have and to hold the said seignory and tract of lands, domains, high, middle and low justice, ground rent, seignors' rent, lots, ventes, mills, houses, buildings, tenements, hereditaments, and all and singular other the premises hereinbefore granted, released, and confirmed, or meant, mentioned, or intended so to be, and every part and parcel thereof, with their and every of their rights, members and appurtenances, unto the said Gabriel Christie, his heirs and assigns, to the only proper use and behoof of the said Gabriel Christie, his heirs and assigns forever, to or for no other use, intent, or purpose whatsoever, subject, nevertheless, to the feodal right and duties which belong to his majesty the king of Great Britain, and his successors, kings of Great Britain, nevertheless quit of all the said right for all the time past to the day of the date of these presents, and quit of all other demands whatsoever before the said seignory lands and premises became the right and property of the said Gabriel Christie by virtue of or under the same deed or instrument in manner as afore-
1289 said. And the said Louis le Gardeur, knight of Repentigny, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and grant to and with the said Gabriel Christie, his heirs and assigns, in manner and form following; that is to say, that he, the said Louis le Gardeur, knight of Repentigny, and Mary Magdelan Chausse Gros de Lery, his wife, and the said Peter le Gardeur, master of Repentigny, party to these presents, some or one of them are and stand, or is and standeth, lawfully and absolutely seized of a good, sure, perfect, and indefeasible estate of inheritance in fee simple, to them and their heirs, or to the heirs of some or one of them, of and in the said seignory of La Chenay, and tract of land, rents, lots, ventes, mills, buildings, tenements, and hereditaments, and all and singular other the premises hereinbefore granted and released, or mentioned, or intended so to be, with their and every of their appurtenances, without any condition, power of reversion, or limitation, of any use or uses, or other restraint, matter, or thing whatsoever, whereby to alter, change, charge, impeach or incumber the same premises; and that they, the said Louis le Gardeur, knight of Repentigny, and Mary Magdelan Chausse Gros de Lery, his wife, and the said Peter le Gardeur, master of Repentigny, (party to these presents,) have, or some or one of them hath, good right, full power, and lawful and absolute authority to grant, bargain, sell, release, ratify, and confirm the same premises unto the said Gabriel Christie, his heirs and assigns, to the only proper use and behoof of the said Ga-
1290 briel Christie, his heirs and assigns forever, according to the true intent and meaning of these presents. And also that he, the said Gabriel Christie, his heirs and assigns, shall and may from time to time, and at all times forever hereafter, peaceably and quietly have, hold, occupy, possess, and enjoy all and singular the said seignory and tract of land, rents, lots, ventes, mills, buildings, tenements, and hereditaments, and all and singular other the premises, with the appurtenances, and every part and parcel thereof, without the lawful let, suit, trouble, hindrance, molestation, interruption, eviction, or disturbance of or by them, the said Louis le Gardeur, knight of Repentigny, and Mary Magdelan Chausse Gros de Lery, his wife, and Peter le Gardeur, master of Repentigny, (party hereto,) or any or either of them, or their, or any or either of their heirs or assigns, or his or their, or any of their ancestors, or any other person or persons lawfully claiming or to claim by, from, or under her, them, or any or either of them; and that freed and discharged, or otherwise well and sufficiently saved, kept harmless, and indemnified of, from, and against all former and other gifts, grants, bargains, sales, leases, mortgages, jointures, dowers, uses, trusts,

wills, entails, fines, issues, amerciaments, seizures, bonds, annuities, writings obligatory, statutes, merchant and of the staple recognizances, extents, judgments, executions, rents, and arrearages of rents, and of and from all former and other charges, estates, rights, titles, troubles, and incum-
1291 brances whatsoever had, made, committed, done, or suffered, or to be had, made, committed, done, or suffered, by the said Louis le Gardeur, knight of Repentigny, and Mary Magdelan Chausse Gros de Lery, his wife, and Peter le Gardeur, master of Repentigny, (party hereto,) or any or either of them, or his, her, or their ancestors, or any other person or persons lawfully claiming or to claim by, from, or under him, her, them, or any or either of them, save and except as hereinbefore in these presents is mentioned; and further, that he, the said Louis le Gardeur, knight of Repentigny, and the said Mary Magdelan Chausse Gros de Lery, his wife, and the said Peter le Gardeur, master of Repentigny, (party hereto,) and each and every of them, their, and each and every of their heirs, and each and every of their ancestors, and all and every other person or persons having or lawfully claiming any estate, right, title, or interest of, in, or to the said seignory of La Chenay and premises hereby released and confirmed or mentioned so to be, or any part or parcel thereof, by, from, or under him, her, them, or any of them, shall and will from time to time, and at all times hereafter, at the request, costs and charges in the law, of the said Gabriel Christie, his heirs or assigns, make, do, acknowledge, levy, suffer, and execute, or cause or procure to be made, done, acknowledged, levied, suffered, and executed all and every such further and other lawful and reasonable acts, deeds, conveyances, and assurances in the law whatsoever, for the further, better, more perfect, and absolute granting, releasing, con-
1292 veying, confirming, and assuring all and singular the said premises hereinbefore mentioned to be granted, released, and confirmed, or intended so to be, with their and every of their appurtenances, unto the said Gabriel Christie, his heirs and assigns, to the proper use and behoof of the said Gabriel Christie, his heirs and assigns forever, as by the said Gabriel Christie, his heirs or assigns, or his or their counsel learned in the law, shall be reasonably devised or advised and required, so as such further assurances or any of them contain or imply in them no further or other warranty or covenants than against the acts of the person or persons, his or their heirs, who shall be required to make and execute the same. And the said Peter le Gardeur, master of Repentigny, party to these presents, for himself, his heirs, executors, and administrators, doth covenant, promise, and grant to and with the said Gabriel Christie, his heirs and assigns, by these presents, that he, the said Peter le Gardeur, master of Repentigny, hath not at any time heretofore made, done, committed, or wittingly or willingly suffered any act, matter, or thing whatsoever, whereby or by means whereof the said seignory of La Chenay tract of land, rents, lots ventes, mills, buildings, tenements, hereditaments, and premises hereby granted, released, and confirmed, or mentioned, and intended so to be, or any part or parcel thereof, are, is, can, shall, or may be impeached, charged, affected, or incumbered in
1293 title, charge, estate, or otherwise howsoever, save and except as heretofore is mentioned.

In witness whereof, the said parties to these presents have hereunto set their hands and seals the day and year first above written,

(Signed) LOUIS LE GARDEUR, *Ch'r de Repentigny.*
MARIE MADELAINE CHAUSSE GROS DE LERY.
PIERE LE GARDEUR DE REPENTIGNY.

Sealed and delivered by the within names, Louis le Gardeur, knight of

Repentigny, and Peter le Gardeur, master of Repentigny, (being first duly stampt,) in the presence of us.
(Signed) JACQUES LEMOINE.
CUROT, *Temoin.*

Sealed and delivered by the within-named Dame Mary Magdelan Chausse Gros de Lery, (being first duly stampt,) in the presence of us.
(Signed) FRAN'S MACKAY.
CHAS. BIGGS.

Received, the day and year first within written, of and from the within-named Gabriel Christie, the sum of one thousand seven hundred and fifty pounds (£1,750,) of lawful money of Great Britain, in full for the consideration money within mentioned, to be paid by him to me, by me.
(Signed) LOUIS LE GARDEUR, *Ch'r de Repentigny.*

Witness: (Signed) JACQUES LEMOIN, *Temoin.*
CUROT, *Temoin.*

1294 Be it remembered, that on the second day of March, in the seventh year of the reign of our sovereign lord George the Third, king of Great Britain, and so forth, personally came and appeared before me the within-named Marie Madelaine Chausse Gros de Lery, wife of Louis le Gardeur, knight of Repentigny, and did then and there own and acknowledge this present lease and release to be her free and voluntary act and deed; and being by me, the said lord mayor, solely and privately examined apart from her husband, did declare that she had executed the same without threats, fear, or force of her said husband, or any other person.

In testimony whereof, I, the said lord mayor, have subscribed my name the day and year above written.
(Signed) ROB'T KITE, *Mayor.*

To all to whom these presents shall come, I, Sir Robert Kite, knight, lord mayor of the city of London, in pursuance of an act of Parliament made and passed in the fifth year of the reign of our sovereign lord King George the Second, entitled an act for the more easy recovery of debts in his majesty's plantations and colonies in America, do hereby certify that on the second day of March last personally came and appeared before me Francis Mackay,
1295 of Conduct street, in the parish of Saint George, Hanover Square, esquire, and on the day of the date hereof personally came and appeared before me Jacques Lemoine, of the town of Montreal, in Canada, in North America, but at present residing in the city of London, merchant, being persons well known and worthy of good credit, and did, by solemn oath, which they severally took upon the Holy Evangelists of Almighty God, solemnly declare, testify, and depose to be true the several matters and things contained in their several affidavits hereunto annexed.

And I, the said lord mayor, do further certify that Marie Madelaine Chausse Gros de Lery, wife of Louis le Gardeur, knight of Repentigny, did on the said second day of March last personally appear, and being solely and privately examined by me, the said lord mayor, apart from her said husband, did declare her free and voluntary consent to the lease and release hereunto annexed, and that she had executed the same without threats, fear, or force of her said husband, or any other person, as by an endorsement on the said release under the hand of me, the said lord mayor, it doth and may appear.

In faith and testimony whereof, I, the said lord mayor, have caused the

[L. S.] seal of the office of mayoralty of the said city of London to be hereunto put and affixed, and the lease and release mentioned in the said affidavits to be also hereunto annexed. Dated in London the twenty-
1296 fourth day of April, in the seventh year of the reign of our sovereign lord George the Third, by the grace of God king of Great Britain, France, and Ireland, defender of the faith, and in the year of our Lord one thousand seven hundred and sixty-seven.

FRANCIS HODGES.

Francis Mackay, of Conduit street, in the parish of Saint George, Hanover Square, esquire, maketh oath that he was present, and did see Dame Mary Magdelaine Chausse Gros de Lery, wife of Louis le Gardeur, knight of Repentigny, esquire, also formerly of the town of Montreal, in Canada, in North America, but now of Paris, in the kingdom of France, sign, seal, and as her act and deed deliver, the indentures of lease and release hereunto annexed, bearing date respectively the twenty-seventh and twenty-eighth days of October, in the year of our Lord one thousand seven hundred and sixty-six. And he, this deponent, further saith that he did subscribe his name on the back of each of the said deeds as a witness to the execution thereof by the said Dame Mary Magdelain Chausse Gros de Lery, and that Charles Biggs, the other subscribing witness thereto, did also subscribe his name in this deponent's presence as the other witness to the execution of the said deeds by the said Dame Mary Magdelan Chausse Gros de Lery, and that the names Chas. Biggs and Fran's Mackay, so subscribed, are of the proper handwriting of the said Charles Biggs and this deponent,
1297 respectively.

(Signed) FRAN'S MACKAY.

Sworn the 2d day of March, 1767, before me, in London.

(Signed) ROB'T KITE, *Mayor.*

1301 Appendix document No. 15, tracing of an ancient French map, entitled "Parties les plus occidentales du Canada," sent forward to Washington for use of the U. S. Supreme Court, under rule No. 8 [3.]

Appendix document No. 16, seignorial questions, submitted by the attorney general of Lower Canada, under seignorial act of 1854, to the judges, with the counter-questions and the replies of the judges, vols. A and B, in 5 parts: Quebec, 1856. Printed books.

1303 *Final decree, confirming title of petitioners, passed, entered, and filed 5th April, 1864.*

This cause came on to be heard at the June term of said district court, A. D. 1863, on the pleadings and proofs, and was argued by counsel at the November term thereof, A. D. 1863; and the court having examined the grant and title alleged and set forth in the petition, and particularly as against the United States, and in this latter respect being governed by the laws of nations and of the country from which the title was derived, and by the principles, so far as they are applicable of the act of Congress approved the twenty-sixth day of May, A. D. eighteen hundred and twenty-four, referred to in the act of Congress of April nineteenth, eighteen hundred and sixty, under which the present petition is presented, and having examined the evidence produced by the petitioners in support of their claim, thereupon, and upon consideration of the pleadings and proofs in the case, it is ordered, adjudged, and decreed as follows, to wit:

The court find and adjudge that on the eighteenth day of October, in the

year of our Lord one thousand seven hundred and fifty, the Marquis de la Jonquiere, then lieutenant governor of New France, and Francis Bi-
1304 got, then intendant of New France, on the application of the said Louis de Bonne, and the said Louis le Gardeur de Repentigny, granted and conceded to them, the said De Bonne and De Repentigny, the place called Sault Ste Marie, then lying in said New France, now in the State of Michigan; that said governor and intendant, on the day and in the year aforesaid, issued and delivered to them, the said De Bonne and De Repentigny, a concession therefor, which was in the words and figures following, to wit:*

[215] DU 18 OCTOBER, 1750.

Le Marquis de la Jonquiere, &c., Francois Bigot, &c.:

Vu la requeste a nous presentee par Messrs. De Bonne, capitaine reforme dans le regiment de Conde infanterie, et le Chevalier de Repentigny, enseigne dans les troupes de ce pays, contenant que dans le dessein ou ils sont d' etablir une seigneurie ils ont jette les yeux sur l'endroit nomme le Sault Ste Marie; que des etablissements dans ce lieu seraient d'autant plus utiles que les voyageurs des postes voisins et ceux de la mer d'ouest y trouveraient une retraite assuree, et par les souis et precautions que les supplians se proposent de prendre ils detriuroient dans ces quartiers le commerce des sauvages avec l'Anglais. Pourquoi ils nous supplient de leur accorder la concession du dit Sault Ste Marie, avec six lieues de front sur le portage sur six lieues de profondeur, bordant la riviere qui separe les deux
1305 lacs, a quoi ayant egard, nous, en vertu du pouvoir a nous conjointement donne par sa majeste, avons accorde et concede, accordons et concedons par ces presentes aux Srs. De Bonne et Chevalier De Repentigny le dit Sault Ste Marie, avec six lieues de front sur six lieues de profondeur, bordant la riviere qui separe les deux lacs, pour enjouir par les dits Srs. De Bonne et Repentigny, leurs hoirs, et ayants cause a perpetuite a titre de fief et seigneurie, haute, moyenne, et basse justice, avec droit de peche et chasse, seulement dans toute le tendue de la dite concession, a la charge de porter foi et hommage au chateau St. Louis, de Quebec; du quel ils releveront aux droits et redevances accoutumes suivant la coutume de Paris suivie en ce pays; de conserver et faire conserver par leurs tenanciers les bois de chesne propres pour la construction des vaisseaux du roy; de donner avis a sa majeste des mines, minieres et mineraux, si aucunes se trouvent dans l'entendue de la dite concession; que les appellations du juge que y sera etabli sortiront en la justice royale de Montreal; d'y tenir feu et lieu, et le faire tenir par leurs tenanciers de deserter et faire deserter la dite terre; a faute de quoi, la presente concession ser a et demeuera nulle; laisser les chemins du roy et autres juges necessaires pour l'utilite publique et de faire inserer pareilles conditions dans les concessions qu'ils feront a leurs tenanciers, aux cens rentes et redevances accoutumes par arpent de
1306 terre de front sur quarante de profordeur; laisser les greves libres a tous pecheurs a l'exception de celles dont ils auront besoin pour leur peche et en cas que sa majeste ait besoin dans la suite d'aucune partie du dit terrain pour y faire construire des forts, batteries, place d'armes, magazines et autres ouvrages publics, sa majeste pourra les prendre aussi bien que les arbres necessaires pour les dits ouvrages et le bois de chauffage pour la garrison des forts, sans etre tenue a aucun dedommagement; reservons pareillement au nom de sa majeste la liberte de prendre sur la dite concession les bois de chesne mature et generalement tous les bois qui seront propres pour la construction et armement de ses vaisseaux, sans etre egale-

* A translation will be found in the petition near the beginning.

ment tenue a aucune indemnite, le tout sous le bon plaisir de sa majeste, de laquelle ils seront tenus de prendre confirmation des presentes dans l'an. En temoin de quoi, etc.

(Signe) LAJONQUIERE ET BIGOT.
Contresigne et cachete. BIGOT.

And the court further find, adjudge, and decree, that within one year from the said eighteenth day of October, in the year aforesaid, the said De Bonne and De Repentigny applied to the then king of France for a confirmation and ratification of the said concession, and that on the twenty-fourth day of June, in the year seventeen hundred and fifty-one, Louis XV, king of France, by an order or brevet of that date, under his sign manuel, confirmed
1307 and ratified the said concession, which order or brevet was and is in the words and figures following, that is to say:*

Brevet de ratification de concession pour los Sieurs de Bonne et Repentigny.

Aujour d' hui vingt quatre Juin, mil sept cent cinquante, un le roy etant a Versailles, voulant confirmer et ratifier une concession fait le dix huit Octobre, mil sept cent cinquante par les Srs. Marquis de la Jonquiere, gouverneur lieutenant general en la Nouvelle France, et Bigot, intendant au dit pays, aux Srs. de Bonne, capitaine reforme dans le regiment de Conde infanterie, et Chev. de Repentigny, enseigne dans les troupes de Canada, du lieu nomme le Sault Ste Marie, avec six lieues de front sur le portage sur six lieues de profondeur, bordant la riviere qui separe les deux lacs, sa majeste a ratifie et confirme la ditte concession. Vent en consequence que les dits Srs. de Bonne et Repentigny, leur heritiers, ou ayant cause jouissent a perpetuite comme de leur propres de la dite terre a titre de fief et seigneurie, avec haute, moyenne, et basse justice, avec droit de chasse et peche seulement dans toute letendue de la dite concession, suivant et conformement a celle qui leur en a ete faite, sans que pour raisons de ce ils soient tenus de payer a sa majeste ni a ses successeurs rois aucune finance ni indemnite ni desquelles a quelques sommes quelles puissent monter sa majeste
1308 leur a fait don et remise; a la charge de porter foi et hommage au chateau de St. Louis de Quebec du quel le dit fief relevera, et des autres redevances partees par la coutume de Paris suivie au dit pays, et que les appellations du juge qui y sera etable ressortiront en la jurisdiction de Montreal, a la charge aussi de conserver et faire conserver par leurs tenanciers les bois de chesne propres pour la construction des vaisseaux de sa majeste, et de donner avis a sa majeste ou aux gouverneur et intendant du pays des mines, minieres, ou mineraux, si aucuns se trouvent dans la ditte concession, de la mettre en valeur et d' y faire tenir feu et lieu par leurs tenanciers, faute de quoi elle sera reunie au domaine de sa Majeste de laisser libres les chemins necessaires pour l'utilite publique, de laisser aussi les greves libres a tous pecheurs, a l' exception de celles don't les dits Sieurs de Bonne et Repentigny auront besoin pour leur peche, et en cas que dans la suite sa majeste eut besoin d'aucune partie du dit terrain pour y faire construire des forts, batteries, places d'armes, magazins, et autres ouvrages publics, elle pourra les prendre aussi bienque les arbres qui seront necessaires pour les dits ouvrages publics et les bois de chauffage pour la garrison des dits forts, sans etre tenue a aucun de dommagement, voulant sa majeste que la dite concession soit sujette aux conditions cy dessus expliquees sans aucune exception sous pretexte qu elles n' aurait pas ete stipulee
1309 dans la ditte concession et pour temoignage de sa volonte, sa majeste m 'a ordonne d'expedier le present brevet qui sera enregistre augreffe

* A translation will be found in the petition near the beginning.

du couseil superieur de Quebec et qu'elle a voulu signer de sa main et etre contresigne par moi son conseiller secretaire d' etat et de ses commandements et finances.

(Signed) LOUIS.
(Signed) ROUILLE.

Which order or brevet of ratification was duly registered as required by the laws and usages of the province of Quebec, at Quebec, on the eleventh day of August, in the year one thousand seven hundred and sixty-six.

The court, in adjudicating the question of the validity of the said title as against the United States, being governed as required by the act of Congress approved April 19th, 1860, under which said petition is presented, finds, adjudges, and decrees that the said title was at the time it was derived valid as against the United States, and that said title is valid as against the United States; and that the said alleged grant, set forth in said petition, was and is a valid grant, the court hereby finding and decreeing in favor of the validity of the same upon said pleadings and proofs.

And the court further finds, orders, and decrees that the said tract or parcel of land is bounded and described as follows, to wit: Beginning at a point on the shore of Lake Superior, from which a line running due south
1310 will intersect the section line between sections twenty-five (25) and thirty-six (36) of township number forty-seven (47) north, of range number three (3) west, at a point sixty-one (61) chains and three and .84 (3.84) links west from the eastern extremity of the line between fractional sections thirty (30) and thirty-one (31) of township number forty-seven (47) north, of range number two (2) west, said extremity being on the western edge or shore of Whaiskee Bay, so called, as marked and laid down on the maps of the surveys of the United States in the General Land Office of the United States, which point of intersection is hereby fixed on the line between sections twenty-five (25) and thirty-six (36) of said township forty-seven (47) north, of range three (3) west, and at a distance of twenty-three (23) chains and sixty-five and .84 (65.84) links west from the eastern line of said last-mentioned township; running from said point on the shore of Lake Superior due south and at the said distance of twenty-three (23) chains and sixty-five and .84 (65.84) links from the line between said ranges two and three (2 and 3) six (6) French leagues, equivalent to eighteen (18) miles twenty-four (24) chains, ninety-two (92) links, and .18 of a link; thence due east five (5) French leagues, equivalent to fifteen (15) miles, twenty (20) chains, seventy-six (76) links, and .81 of a link, to the mouth of the
1311 Great or Southern Munuskong River, where it enters Munaskong Bay on section fourteen (14) in township forty-four (44) north, of range one (1) east, reference being had to said surveys, be the said distance more or less; running thence upward adjoining to and bordering the Munuskong Bay, the St. Mary's River, and Lake Superior, to the place of beginning, containing thirty-six (36) square leagues, French measure, be the same more or less, the eastern and northern boundary of said tract being on said bay, river and lake; the said western and southern boundary lines to be ascertained and fixed from, and with reference to, and in accordance with, the public surveys and the official maps and plats thereof on file in the proper office.

And the court further finds, adjudges, and decrees that the said petitioners are the legal representatives of the said Sieur de Bonne and the Chevalier de Repentigny mentioned in the said act of Congress of the nineteenth of April, 1860, as follows, viz: That said Guy Rotton, one of the petitioners, is the legal representative of said Sieur de Bonne in respect to said tract of land, and entitled to all the right, title, interest, and estate of said De

Bonne therein or thereto, the said Ruy Rotton holding the same by valid conveyances and devises from Pierre Amable de Bonne, who was the sole heir of said Sieur Louis de Bonne, and who took the same by inheritance from his said father. That the other petitioners, to wit, the said Louise Pauline le Gardeur de Repentigny, Lizette Antoinette le Gardeur de Repentigny, (widow of Pierre Murville Bonfils, deceased,) are the only
1312 remaining great-grandchildren of said Chevalier de Repentigny; that said Therese Emilie Clavie, Aristide Clavie, Marie Clorinde Clavie and Marie Octavie Clavie are the sole and only children and heirs of Josephine Lucrece le Gardeur de Repentigny, now deceased, once widow of Cyprian Clavie and another great-grandchild of said chevalier and a sister of said Louise Pauline and Lizette Antoinette, and one of the original petitioners, but who died March nineteenth, A. D. eighteen hundred and sixty-three; that said Louise Pauline, Lizette Antoinette, Therese Emelie, Aristide, Marie Clarinde, and Marie Octave are the sole representatives of said chevalier in respect to said tract, and are by inheritance and heirship, as the sole descendants and next of kin of the said Chevalier de Repentigny, in law and in equity entitled to all the right, title, interest, and estate of their said ancester therein or thereto, the said Louise Pauline and Lizette Antoinette in and to two undivided third parts of his said right, title, interest, and estate, and the said Therese Emelie Clavie, Ariside Clavie, Marie Clorinde Clavie, and Marie Octavie Clavie, as the heirs and representatives of their said mother, Josephine, now deceased, in and to one undivided third part thereof, they, the said Therese, Emilie, Aristide, Marie Clorinde, and Marie Octavie taking the same by representation from their said mother.

(Signed) ROSS WILKINS, *U. S. District Judge.*

1315 *Notice excepting to decree on behalf of respondents, filed 16th, April, 1864.*

Sir: Inasmuch as no sufficient opportunity has been given me of considering the form of the decree in this cause, and I perceive the same has been entered upon the books, though not yet signed by the court, and that among other matters no provision is thereby made for taking an account of the sum due to the respondents for money fines nor for having a survey made by the order of the court, but the premises are described by reference to modern surveys by town and range without such premises having been sufficiently identified with the lands as the lands in the pleadings mentioned, take notice that I hereby except to the said decree and protest against the same, being signed by the court in its present form, and reserve all rights of the respondents purporting to be bound by the said decree.

Dated 16th April, 1864.

(Signed) ALFRED RUSSELL,
U. S. Dist. Att'y.

To J. M. Howard, Esq., *Sol. for Pet'rs.*

1317 *Motion to rectify decree pursuant to exceptions, made 18th July, 1864.*

And now comes Alfred Russell, U. S. district attorney, and moves the court upon the matter of the exceptions heretofore filed to the decree in this cause to rectify the said decree before enrolment by ordering a reference for a survey to ascertain the location and boundaries of the tract claimed in said petition, and to compute the money fines due to the United States.

(Signed) ALFRED RUSSELL,
U. S. Dist. Att'y.

Motion refused.

1319 *Petition and allowance of appeal, filed 16th August, 1864.*

To the Honorable Noah H. Swayne, one of the justices of the Supreme Court of the United States:

The petition of the United States of America showeth that the above-entitled cause was brought under a private act of Congress, passed on the 19th day of April, 1860, authorizing the same to be brought in the district court of the United States for Michigan, and that in and by said act the attorney of the United States for Michigan was directed to proceed in defence of your petitioners in all things as required by the Missouri lands act, so called, passed in the year 1824.

And your petitioners further represent that heretofore, and within one year, a final decree has been rendered in said cause against your petitioners, and that by the private act aforesaid your petitioners were authorized to appeal from any such decree within one year.

And your petitioners further represent that in and by the said act of 1824 it was made the duty of the Attorney General of the United States to direct an appeal to be made to the Supreme Court of the United States in

1320 his discretion, and the further duty of the district attorney to observe the instruction given to him by the Attorney General in that respect.

And your petitioners further represent that the said Attorney General hath directed an appeal to the Supreme Court in the above-entitled cause.

Wherefore your petitioners pray that an appeal may be allowed therein, and that the record and proceedings in the said cause may be transmitted from the said district to the said Supreme Court, and that a citation may issue to the said petitioners returnable upon the first day of the next ensuing term of the said Supreme Court, and that service of the said citation upon the said petitioners' solicitor of record may be directed, inasmuch as the said petitioners are shown by the record to be non-residents of the United States.

(Signed) ALFRED RUSSELL,
Attorney of the United States for the Eastern District of Michigan.

I do hereby allow an appeal as prayed by the within petition.

(Signed) N. H. SWAYNE,
Asso. Just., S. C., U. S.

16 Aug. 1864.

1323 District Court of the United States
For the Eastern District of Michigan, ss:

I, John Winder, clerk of said court, do hereby certify the above and foregoing document or record to be a transcript of the record of the court aforesaid, in the cause named at the beginning thereof, and that the same has been made up (as nearly as the nature of the said cause would allow) pursuant to Rule LIII of the Rules of the Supreme Court of the United States regulating proceedings in admiralty.

And I do hereby further certify that the "translations" comprised in the said transcript have been made under the authority of this court.

In testimony whereof, I have hereunto set my hand and affixed the seal of the court aforesaid, at Detroit, in said district on this first day of December, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States of America the eighty-ninth.

JNO. WINDER, *Clerk.*

Filed December 8, 1864.

SUPREME COURT

OF THE

UNITED STATES.

No. [illegible] 129

LOUISE PAULINE DE REPENTIGNY, AND OTHERS,

Petitioners and Appellees,

vs.

THE UNITED STATES,

Appellants.

POINTS FOR APPELLEES.

M. HOWARD, OF COUNSEL FOR PETITIONERS.

DETROIT:
ADVERTISER AND TRIBUNE PRINT.

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1320 his discretion, and the further duty of the district attorney to observe the instruction given to him by the Attorney General in that respect.

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(Signed) ALFRED RUSSELL,
Attorney of the United States for the Eastern District of Michigan.

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And I do hereby further certify that the "translations" comprised in the said transcript have been made under the authority of this court.

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JNO. WINDER, *Clerk.*

Filed December 8, 1864.

SUPREME COURT

OF THE

UNITED STATES,

No. ~~332.~~ 129 & 761

LOUISE PAULINE DE REPENTIGNY, AND OTHERS,

Petitioners and Appellees,

vs.

THE UNITED STATES,

Appellants.

POINTS FOR APPELLEES.

J. M. HOWARD, OF COUNSEL FOR PETITIONERS.

DETROIT:
ADVERTISER AND TRIBUNE PRINT.
1865.

SUPREME COURT

OF THE

UNITED STATES,

No. 332.

LOUISE PAULINE DE REPENTIGNY, AND OTHERS,

Petitioners and Appellees,

vs.

THE UNITED STATES,

Appellants.

POINTS FOR APPELLEES.

J. M. HOWARD, OF COUNSEL FOR PETITIONERS.

DETROIT:
ADVERTISER AND TRIBUNE PRINT.
1865.

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36TH CONGRESS,
1ST SESSION.

S. 92.

IN THE SENATE OF THE UNITED STATES.

JANUARY 19, 1860.

Mr. BINGHAM asked, and by unanimous consent obtained, leave to bring in the following bill; which was read twice and referred to the Committee on Private Land Claims.

JANUARY 26, 1860.

Reported by Mr. BENJAMIN without amendment.

A BILL

Authorizing the courts to adjudicate the claim of the legal representatives of the Sieur De Bonne and of the Chevalier de Repentigny to certain land at the Sault Ste. Marie, in the State of Michigan.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the legal representatives of the Sieur de Bonne and of the Chevalier de Repentigny be, and they are hereby, authorized to present their petition to the United States district court for the district of Michigan, setting forth the nature of their claim to certain land at the Sault Ste. Marie, in the State of Michigan, under an

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1ST SESSION.

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A BILL

Authorizing the courts to adjudicate the claim of the legal representatives of the Sieur De Bonne and of the Chevalier de Repentigny to certain land at the Sault Ste. Marie, in the State of Michigan.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the legal representatives of the Sieur de Bonne and of the Chevalier de Repentigny be, and they are hereby, authorized to present their petition to the United States district court for the district of Michigan, setting forth the nature of their claim to certain land at the Sault Ste. Marie, in the State of Michigan, under an alleged grant, in seventeen hundred and fifty, from the governor and lieutenant-general and from the intendant

General of New France, now Canada, with evidence in support of their claim, stating the names, as near as may be, of all persons claiming adversely, and praying that the validity of the title may be inquired into and decided under the laws of nations, the laws, usages, and customs of the country from which the same was derived, and the treaties and laws of the United States; and the said court is hereby authorized to examine the same, and, in adjudicating the question of the validity of the title as against the United States, to be governed by the laws of nations and of the country from which the title was derived, and also by the principles, so far as they are applicable, which are recognized in the act of Congress approved the twenty-sixth May, eighteen hundred and twenty-four "enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of the same;" and the district attorney is hereby directed to proceed, in defense of the interests of the United States, in all things as required and directed by the aforesaid act of twenty-sixth May, eighteen hundred and twenty-four: *Provided*, That suit shall be instituted by the claimants within two years from the passage of this act, and that an appeal may be taken, either by the claimants or the United States, to the Supreme Court of the United States within one year from

Mr. Russell. Wed. Jany 30

Condition of residence & improvement, imper-
tal to Trenchs, not complied with Rec 345 Letter R.
Rec 122 R to Min. 6 1773 & 1776

This is abandt. with forfeiture

Castillero 2 Bl. 351
22 Hov 480 Lin Wayne Rec 139

Fremont case 17 Hov 555 & 1581
Brief Print Gen. 32 [illegible]

Glenn [illegible]
22 Mo. 105

[illegible] Seigniorial [illegible] & Book

Sin principal defining

Grounds & uncertainty of grant, no possession
agreement with [illegible]

[illegible] of [illegible]

[illegible] Bourne Moriety, no attempt to comply with condi-
tions & forfeiture.

[illegible] R. abandt. of [illegible] & [illegible]

Consequent & continuous [illegible]

[illegible] of Oblign. to [illegible] Obl. G. Bortan to have
preliminary final 1763

it to that son of his sister, Mrs. Rotton, who should be second in the

the date of the rendition of the decree of the district court aforesaid.

SEC. 2. *And be it further enacted*, That in the case of a final decision under this act against the validity of the said claim, or in case of the failure of claimants to prosecute it within the period specified, the said claim shall be held forever barred, both in law and equity; but in the case of a final decree in favor of the validity of the grant, it shall not be construed to affect or in any way impair any adverse sales, claims, or other rights which have been recognized by the United States within the limits of the said claim, or which, under any law of the United States may have heretofore been brought to the notice of the land commissioners or of the land officers in Michigan, or any of the land granted to the State of Michigan, or occupied by it, for the Sault Ste Marie canal, its tow-path and appurtenances, but for the area of any such adverse claims the legal representatives of the said De Bonne and Repentigny shall receive from the Commissioner of the General Land Office warrants authorizing them or their assigns to enter any other lands belonging to the United States, and subject to entry at private sale at one dollar and twenty-five cents per acre, which warrants shall be for sections or legal subdivisions of sections, at the option of the parties entitled to receive them.

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A BILL

Authorizing the courts to adjudicate the claim of the legal representatives of the Sieur de Bonne and Chevalier de Repentigny to certain land at the Sault Ste. Marie, in the State of Michigan.

1860—JANUARY 19.—Read twice and referred to the Committe on Private Land Claims.

JANUARY 26.—Reported without amendment.

ABSTRACT OF THE FACTS.

The material facts of the case are as follows:

On the 18th of Oct., 1750, the Marquis de la Jonquière, Governor of New France, and Bigot, the Intendant, made to Capt. DeBonne and the Chevalier de Repentigny, an ensign in the colonial service, a concession of land at the Saut Ste. Marie, in what is the present State of Michigan, of a tract of land, with six leagues front upon the portage, by six leagues in depth, bordering the river which separates the two lakes, to be enjoyed by them, their heirs and assigns in perpetuity, by title of fief and seigniory, (à titre de fief et seignernie), with the right of fishing and hunting within the whole extent of said concession; upon condition (à la charge) of doing faith and homage at the Castle of St. Louis at Quebec, of which they should hold said lands, upon the customary rights and services according to the *coutume de Paris* followed in that country, etc.; to hold and possess the same by themselves, and to cause the same to be held and possessed by their tenants; in default whereof it should be rëunited to his majesty's domain, etc. This concession, by its terms, was to be ratified by the King within one year from its date. (*Printed case, pp.* 3 *and* 4). The King, by his brevet of ratification, confirmed the concession on the 24th of June, 1751. (Printed case, pp. 5 and 6). A map of the tract was made by the Government Surveyor, Franquett, in 1752, and returned to the proper office in Paris.

Captain DeBonne, a nephew of Governor De Lajonquière, fell in the battle of Sillery, in the spring of 1760, in the attempt of the Count De Levi to recapture Quebec from the English. He left one son, Pierre Amable De Bonne, born at Quebec November 25, 1758. He remained in the Province after the conquest, and on the 12th of July, 1796, sold his interest in the seignory to James Caldwell, of Albany, N. Y., for £1570–2–3 sterling, a part of which was paid down, and the balance by the terms of the deed, secured as a lien upon the land. Caldwell paid the balance and obtained a full discharge on the 30th of June, 1798, (pages 232–3), on which day he executed a quitclaim deed of the same interest to Arthur Noble, of Nobleboro', New York. (Page 234). Noble, by his will of 1814, devised the interest to his nephew, John Slacke, of Dublin, Ireland, (page 339), John Slacke, by a codicil to his will dated in 1819, devised it to his wife Agnes Slacke in trust, to be by her disposed of as she might think fit. (Pages 331–2). Agnes Slacke, by her deed of appointment of the 5th of December, 1839, conveyed the same to her son John Gray Slacke, (pp. 60, 61, 62). John Gray Slacke, by his will of 1841, devised it in trust to Henry Battersby, of Dublin, with power to deed it to that son of his sister, Mrs. Rotton, who should be second in the

order of birth at the time of the death of the testator's wife, (p. 332). John Rotton stood in that relation; and on the 17th of May, 1861, Battersby deeded it to said John Rotton, (p. 62), a Lieut. Colonel in the British service and one of the petitioners.

The Chevelier de Repentigny, the other grantee entered the colonial military service at an early age. In 1749, he was sent to the Saut Ste Marie where he remained in person until 1755, engaged in improving the seigniory, erecting a palisade fort, building houses, introducing cattle, providing for the comfort of the furtraders and voyageurs and negotiating with the Indians. In 1750, he had taken up to the Saut eight cattle and two horses, and in 1751 had finished the fort and got out the timber for three houses which were afterwards finished. He also commenced the cultivation of Indian corn. In the spring or fall of 1755, he returned to Montreal, where he continued in the public service.

He left Jean B. Cadotte in charge of his affairs at the Saut, and in January, 1756, entered into co-partnership with De Langy and others at Montreal for carrying on the fur trade at the Saut and other posts in the upper country.

In the Spring of 1759, while at Montreal, he gave his wife a general power of attorney to carry on, govern and transact all his affairs. He remained in the military service, and like DeBonne was engaged in the battle of Sillery in the Spring of 1760 under the Count de Levi for the recapture of Quebec. In May, 1761, Madame de Repentigny, his agent, authorized Raimond Quenel to go to the Saut and the other posts held by the partnership, and receive his share of the furs. He remained in Canada until 1764, when he went to France. In 1769 he was appointed commandant of the depot of troops at the Isle de Rè, where he remained till 1778, when he was sent to the West Indies in command of the regiment d'Amerique. He was stationed with his regiment at Guadaloupe, where he remained until 1782, having in the meantime been appointed to the rank of brigadier. A part of this regiment, as allies of the United States, participated in the operations in Georgia during the Revolutionary war. He returned to France in 1782, and in 1783 was appointed Military Governor of Senegal. In the summer of 1786 he returned to Paris on furlough and died there October 9, 1786.

He left but one child, his son Gaspard, born at Quebec, July 10, 1753, who in 1777 entered the naval service of France as *enseigne de vaisseau.* He was made a Lieutenant in 1780, and in that year was married in Guadaloupe. He continued in the naval service of France till the time of his death, which took place at Guadaloupe, July 2d, 1808. During his life and after the death of his father he made numerous but fruitless efforts to sell his interest in the seigniory.

His children were three sons, Louis, born at Guadaloupe, who died there without children, May 4, 1820; Theodore, who died there without children, July 1, 1811, and Camille, born at Tours, in France, February 15, 1789.

Camille married Marie Antoinette de Gantheaume at Guadaloupe April 19, 1814, and died there April 1, 1820, leaving his wife surviving him, and the following children: Theodore Rene, who died December 27, 1821, Lizette Antoinette, now a widow and one of the petitioners;

Josephine Lucrece, the widow of Cyprian Clavie, (Josephine died March 19, '63, leaving four children, Therese, Aristide, Marie Clorinde, and Marie Octavie Clavie, minors, for whom a guardian has been appointed by the District Court), and Louise Pauline. And these four children of

Camille are admitted by the stipulation respecting pedigree, (p. 59) to be the legal lineal descendants of the Chevalier Louis de Repentigny.

Lizette, Pauline and the four minors are the other petitioners.

Neither the Chevalier nor any of his descendants ever transferred the interest by will or deed. In 1800 Gaspard made an *acte de notorietè* at Martinique before a notary public, in which he declared and set forth the grounds of his claim, (page 114); and in 1846 the descendants of Camille did the same at Guadaloupe. (Page 35).

During the second session of the 19th Congress (1824–5) the original brevet of ratification signed by the King of France was presented to Mr. Graham, the Commissioner of the general land office, by an agent of the parties in interest to prevent, as he says, "the issuing of patents" to the claimants at the Saut Ste Marie under the act of February 21, 1823: (See House Report 42, 1st session, 20th Congress, pp. 4 to 7). December 7, '26, Mrs. Slacke's caveat was filed in that office showing the grounds of the claim. On the 15th of the same month, Mr. Cambreling, of New York presented to Congress the petition of Mrs. Slacke praying a recognition of the claim; and this petition continued to be presented from time to time to Congress down to 1841, when the De Repentigny heirs also presented their petition for the same purpose. Agents were employed by both the De Bonne and De Repentigny representatives at great expense to obtain a recognition of the claim by Congress, down to the passage of the Act of 19th April, 1860, (12 L. & B. Private acts, p. 6), by which this proceeding was authorized.

SUPREME COURT

OF THE

UNITED STATES.

LOUISE PAULINE LE GARDEUR DE REPENTIGNY, LIZETTE ANTOINETTE LE GARDEUR DE REPENTIGNY, GUY ROTTON, THERESE EMILIE CLAVIE, ARISTIDE CLAVIE, MARIE CLORINDE CLAVIE, AND MARIE OCTAVIE CLAVIE,
Petitioners, Appellees,

vs.

THE UNITED STATES,
Appellants.

Appeal from the District Court of the United States for the Eastern District of Michigan.

The questions arising in the case are the following:

I. Is it proved that the Governor and Intendant of Canada made the concession of 1750?

II. Did the King of France issue his brevet of ratification of this concession?

III. Are the petitioners the legal representatives of the original grantees in respect to this fief?

IV. Are the petitioners bound to show anything beyond a valid title from the French Government?

V. If so, have the grantees or their representatives been guilty of any act of omission or commission by which they or any of them have lost the title?

I.

The fact of the concession is proved by document I, certified at Quebec on the 16th of March, 1861, under the seal of the Province. It is, (by mistake, probably.) omitted in the printed case.

This document having been the act of the Governor and Intendant, was properly recorded at Quebec. It is a true copy of the concession set forth in the petition, and is admissible evidence; (21 How. 175, and cases there referred to.) (See also for this concession, the Quebec collection, (1852,) entitled *Pieces et documens relatifs à la Tenure Seigneuriale demandès par une Addresse de L'Assemblé Legislatif*, 1851, *page* 220.

II.

The fact of the ratification of this concession by the King of France within one year from its date, (June 24, 1751,) is proved by the original brevet of the King, signed by him and by his Minister, Rouillè, produced by the witness Favarger, marked *exhibit* 43. *See printed case*, folio 50. The original is returned to the Clerk of this Court.

As an ancient deed it proves itself without showing possession under it

1 Greenl. Ev. §144, note 1 on page 186.
1 Phil. on Ev. (2d Apr., 1859,) pp. 475, 480, 481, and notes.

If further proof be needed it is found in the copy of the same brevet, registered in the office of the Greffier of the Supreme Council of Quebec, on the 11th of August, 1766. The indorsement on the original parchmment is in these words: "*Recorded in said office on Monday the 11th day of August*, 1766, *at — o'clock afternoon in, the French register, Livre E, page* 164." A certified copy of this ratification is contained also in the above document I, mentioned in the first point, under the seal of the Province, and the official certificate shows it to have been taken from Liber E, page 164.

The original was transmitted to de La Jonquière and Bigot, in a dispatch from the French Minister dated at Versailles, June 25, 1751. (*See Paris Document* 93 *; printed case page* 129.)

April 28, 1782, the Minister, to enable Pierre Amable de Bonne, the son of one of the grantees, to do faith and homage for the land, sent to him a copy of this brevet or ratification. (*See Paris document* 22 ; *printed case page* 122. This proof removes all ground for suspecting the genuineness of those documents.

And the Court will take notice of the laws of New France; they are not to be treated as foreign laws and proved as facts.

Fremont vs. United States, 17 How. 557.

III.

The petitioners are the legal representatives of the concessees.

The term "legal representatives" is not technical, and must in the act of 1860 be understood to embrace the persons then claiming to hold the interest of the original grantees, by descent, conveyance, or devise. To confine it to *heirs* would, as will appear hereafter, be to render the act nugatory so far as the De Bonne moiety is concerned, and to impute to Congress the fault of trifling with the claimant Rotton.

The act of May 26, 1824, allows not only the persons claiming, but their legal representatives to present a petition, etc.

The act of March 2d, 1805, confirmed lands to "legal representatives." (3 United States at large, 324.) The Florida act of 1822, (3 Do. 717,) uses similar language in section four, and gives the right to the "heirs or representatives;" and the Act of Sept. 26, 1850, relating to claims at the Saut Ste. Marie, Michigan, (9 Do., 470, Sec. 3), gives it to "any person, or the legal representative or representatives of any person or persons."

The moiety of Capt. DeBonne has passed to the petitioner, Guy Rotton.

Capt. DeBonne was killed in the Spring of 1760, in the attempt of De Levi to recapture Quebec after its surrender to Wolfe's forces. (*See Vol. 10 Docs., rel. Colonial Hist. N. Y., p.* 1089).

The stipulation respecting pedigree, admits he died some time before the 25th of July, 1763. (*P. 59 of printed case*). He left but one child, Pierre Amable, (*ibid*) who, in 1796, was a Judge of the Court of King's Bench at Quebec. Of course, he inherited all the right of his father.

July 12, 1796, Pierre Amable made a deed of bargain and sale of all his interest to James Caldwell, of Albany, for £1570—2—3 sterling, of which there was paid down £225, and a lien retained on the land for the balance, to be paid as follows:

£563—11—1½ on the 1 Oct., 1796.
£788—11—1½ " " " " 1797,

being the balance.

(See for this deed doc. marked XX, in a bundle under the seal of the Province of Canada, and duly certified under date of Aug. 30, 1861, referred to in Judge Badgley's deposition, answer to 6th direct interrogatory, p. 177 to 181, and for a printed copy p. 230 of printed case).

P. A. DeBonne died Sept. 6, 1816. (See Badgley's dep. fol. 650 printed case).

The treaty of 1794, Art. 9, secures to British subjects the right to sell their lands lying in the United States.

Under this article it was held in *New York* vs. *Clark*, 3 Wheat. 1, that a British subject who took as devisee in 1776, and as grantee in common in 1791, was entitled to hold.

The loss of the original of this notarial deed is sufficiently accounted for by Judge Badgley, *ubi supra*, and see Sutter's case, 21 Howard, 175.

On the 1st of June, 1798, Caldwell entered into a covenant with *Arthur Noble*, to convey to him and his heirs all his interest in the lands by the 1st of August then next, free and clear of the lien due to DeBonne, in consideration that Noble should release him and Jeremiah VanRensselaer from their contract to convey to Noble certain lands in Virginia. (*Printed case, p.* 245, *Doc. XXa.*

On the 30th of June Caldwell paid DeBonne in full the balance of the purchase money, and obtained a formal discharge. (*See printed case, fol.* 838.)

July 18th, 1798, Caldwell, by quit claim deed, conveyed all his interest to *Arthur Noble*, his heirs and assigns, in pursuance of the covenant. *For this quit claim see printed case, p.* 234, *and original Doc. marked L., with stipulation of the District Attorney upon it.*

Arthur Noble died in 1813 or 1814, leaving a will duly proved, in which he devises "to his nephew, *John Slacke*, all his lands in the United States of America."

(See stip. resp. pedigree, and N.'s will, p. 829 printed case, and the *will with certif. of probate*, original Doc. XXII on file in this Court.

John Slacke died between 1820 and 1822, leaving a last will with a codicil dated January 8, 1820, by which he gave full power to his wife, *Agnes Slacke*, to dispose of the seigniory by *deed* or will to any one or more of his children. (*See printed case. pp.* 331—2, *and the will and codicil, with certificate of probate, original document XIII, on file in this Court.*

Agnes Slacke, by deed dated Dec'r. 5th, 1839, conveyed to *John Gray Slacke*, one of the children of John Slacke. the undivided half part of the seigniory. (*See printed case, pp.* 60—1—2, *and the original deed on the files of this Court, marked Doc. XXIV.*

John Gray Slacke died, leaving a last will bearing date March 29, 1841, by which he authorized *Henry Battersby*, after the death of the testator's wife, *Louisa Maria Slacke*, to convey the seigniory to the son of the testator's sister, *Mrs. Rotton*, who should, at the time of the death of said Louisa Maria, be the second in order of birth, provided he should pay Battersby his charges and expenses. See the *printed case*, pp. 332—3—4, *and the will, with certificate of probate*, on file in this Court, marked Doc. XXIV.

Battersby, on the 7th of May, 1861, conveyed the interest to *Guy Rotton*, the second son in the order of birth at the time. (See copy of B.'s deed, printed case, pp. 62—3—4—5 and *the original deed on file, marked Doc. XXVI.* The deed is proved by Mr. Favarger, fol. 54).

The fact that Guy Rotton was, and is the 2nd son of Mrs. Rotton in order of birth, is admitted by the stip. rel. pedigree, fol. 157.

The payment of the expenses is to be inferred, from B.'s recital, that the "other objects of the trust had ceased, and he had been required by said Guy Rotton to convey said moiety of said fief to said Guy Rotton," and from the fact that he did so convey it.

This brings the title of the DeBonne moiety into Guy Rotton by regular transmission, by deed and devise.

The Repentigny Branch of the Claim.

The moiety of the Repentigny has never been affected by any transfer by deed or will, and the fact that the female petitioners are the sole heirs and representatives of the Chevalier de Repentigny, is proved as follows: (*See the stip. rel. pedigree, printed case, pp.* 58—9, *and stip. to amend petition, pp.* 248—9).

The Chevälier died at Paris, Oct. 9, 1786, leaving *Gaspard*, his only child by his wife *Marie Chaussegros de Lery*. Gaspard was then thirty-three years old. Gaspard had by his only wife *Magdeleine Pauline du Quesnel*, whom he married ät Guadaloupe, Dec. 9th, 1780, the following children, viz:

Louis, born at Guadaloupe, died there May 4, 1820, without issue, aged 39 years, never married;

Theodore, born at Guadaloupe Aug. 13, 1786, never married, and died there July 1, 1811; and

Antoine Camille, born at Tours, France, July 15, 1789, married to Marie Antoinette Gantheaume, April 19, 1814, and died at Guadaloupe, April 1, 1820.

Gaspard, the father, died at Pointe-à Pitre, Guadaloupe, July 2, 1808. At his death, his said three sons were his sole heirs-at-law.

By the provisional treaty of peace of 30th Nov., 1782, which took effect Jan. 20, 1783, (8 *Little & B.'s Stats. at large, pp.* 54, 58), the seigniory was found to be included within the limits of the United States, and fell within those of Virginia.

In *Harcourt vs. Gaillard*, 12 Wheat., 523, it was held that the treaty of '82 was a mere recognition of pre-existing rights as to territory, and that no territory was thereby acquired by cession from Great Britain.

See also *Hilton's Lessee vs. Brown*, 1. Wash. C. C. R., 311; R. I. *vs.* Mass., 12 Pet., 729, and Mr. Austin's argument, p. 681.

By the definitive treaty of peace of 3d Sept., 1783, (8 Little & B., 81), §1, Great Britain relinquishes all claim to the government, propriety, and territorial rights of the several United States, and every part thereof, repeating the boundaries agreed upon in that of 1782.

This tract came within the acknowledged limits of Virginia, and so remained until her final cession of the territory northwest of the Ohio, on the 1st of March, 1784.

The Court, in *Harcourt vs. Gaillard*, adhered to the principle asserted by the Congress of the Confederation in their instructions to our Minister to France, of 17th Oct., 1780, that "by the definitive treaty of Paris of 1763, Art. 7, all the territories then claimed by the United States were expressly and irrevocably ceded to the King of Great Britain, and that the United States were, in consequence of the revolution in their government, entitled to the benefit of the cession."—(*Secret Journal of Old Cong.* —"*Foreign Affairs*"—1775–1781. *vol.* 2, *p.* 327).

By the first Constitution of Virginia, (June 29, 1776,—1 Va. R. S. of 1823), §21, the western and northern boundaries of the State are declared to "stand as fixed by the charter of King James the 1st, in the year 1609, and by the public treaty of peace between the Courts of Great Britain and France in the year 1763, unless, by an Act of the Legislature, one or more territories shall hereafter be laid off, and governments established westward of the Alleghany Mountains."

The seigniory was included in the limits fixed by the charter of 1609, (*See* 1 *Va. R. S.*, 1823, *p.* 88); and Virginia re-asserted her claim in a solemn memorial to the Congress in Dec., 1779, in reply to the remonstrance of Maryland.—(*See* 10 *Henning's Stats. at large*, 553, 557).

She had taken good care to establish a government in the region northwest of the Ohio, which she did by her Act of Oct., 1778, organizing the whole of it into a county under the name of *Illinois*, guaranteeing to the inhabitants the free enjoyment of their religion, and all *their civil rights and property.*—(9 *Henning's Stats. at large*, 552).

In *Menard vs. Aspasia*, 5 Pet., 511, this Court held that "the citizens of the County of Illinois were, by this Act, admitted on an equality of

rights with the other citizens of Virginia."—(*And see Mr. Wirt's argument in same case*).

Again, in 1779, (10 [illegible]., 161), Virginia passed an Act prohibiting settlements being made on the northwest side of the Ohio.

This legislation clearly made the inhabitants of the whole territory citizens of Virginia.

McIlvaine ex. Coxe's Lessee, 4 Cr., 212.

The death of the Chevalier de Repentigny, Oct. 9, 1786, cast the descent upon his son, Gaspard.

The right of primogeniture was not abolished in Virginia until Jan. 1, 1787.—(*See* 12 *Henning*, 138).

The ordinance of 1787, for the government of the northwest territory, which went into operation at its date, July 13, 1787, abolished primogeniture, and cast descents, in cases both of residents and non-residents, upon the children and next of kin in equal degree: §§ 1 and 2.

On the 11th of Jan., 1805, Congress passed an Act creating the Territory of Michigan, (2 Little & B., 309), the second section of which declares that there shall be established within the said territory a government in all respects similar to that provided by the ordinance of Congress passed on the 13th day of July, 1787, for the government of the territory of the United States northwest of the river Ohio, and by an Act passed on the 7th day of Aug., 1789, entitled, "An Act to provide for the government of the territory northwest of the river Ohio," and the inhabitants thereof shall be entitled to, and shall enjoy, all and singular the rights, privileges, and advantages granted and secured to the people of the territory of the United States northwest of the river Ohio by said ordinance.

The law of descents stood as settled by the ordinance until the territorial Act of Michigan of Oct. 1, 1818, which provided that "when there are no children of the intestate, the inheritance shall descend equally to the *next of kin in equal degree, and those who represent them, computing by the rules of the civil law.*"

As *Theodore* died unmarried and childless, July 1, 1811, [illegible] his share descended to his brothers, *Louis* and *Camille*, as his next of kin, under the ordinance, reckoning according to the rules of the common law, his mother, Madame Gaspard, not being entitled to any part of his share, because she had no heritable blood. (2 Bl. Com., 222-'3-'4, etc.)

Camille and Louis both died in 1820, Camille leaving four children, (Theodore Renè, Lizette, Josephine, and Louise), and Louis leaving neither widow nor child, but leaving a mother, then Madame *de Marchais*.

These descents were cast under the territorial Act of 1818, which altered the rule of computing the degrees of kindred from that of the common to that of the civil law; in consequence of which his share descended to his mother, who thus became the owner of the share of Louis, or one half of Gaspard's interest.

Sheffield ex. Lovering, 12 Mass., 490.
Knapp ex. Windsor, 6 Cush., 156.
Church ex. Crocker, 8 Mass., 17.
McCullough ex. Lee, 7 Ohio, 15.

Madame Gaspard, afterwards the wife of de Marchais, died in France

May 18, 1836, leaving no children by de Marchais, but leaving the female petitioners, *Lizette*, *Josephine* (who died March 19, 1863, leaving her children, the substituted petitioners, Therese, Aristide, Marie, and Marie Octavie Clavie, her children surviving her), and *Louise*, her grandchildren, and next of kin; those petitioners taking all her interest by descent, under the Michigan Act of 1818, and the Act of 1827, which is a copy of the former.—(*See Terl. Code of Michigan of* 1827, *p.* 64*; and do. of* 1833, *p.* 308).

Thus we trace the shares of Theodore and Louis into the descendants of Camille, who are the French petitioners.

And if it shall be held that, under the ordinance, the share of Theodore who died in 1811, passed to his mother as his next of kin, then, on her death, it descended, through her, to the same petitioners to whom that of Louis descended. So that, whether the rule of the common law or of the civil law be adopted, the result is the same.

Theodore Renè, a son of Camille, died Dec. 27, 1821, aged three years and eight months, and by the Act of 1818, §1, his share descended to his sisters, Lizette, Josephine, and Louise.

Thus it is shown that the whole interest of the Chevalier de R. passed, by descent, to his three great-granddaughters, and, on the death of Josephine, one third part of it to her children above named.

To pass the title, no actual *seizin* of the ancestor was necessary.

Walker on Am. Law, Lecture 30, p. 350.
4 Kent's Com., 388 and *note*.

The ordinance declares that the lands of *non-residents*, as well as residents, shall descend, etc.

Alienage.

The answer (fol. 27) sets up that the petitioners are *aliens*.

The right to take the land, whether by grant, devise, or inheritance, must depend upon the *lex loci rei sitae*.

Story's Confl. of Laws, §§ 430, 434.

The descent was cast upon Pierre Amable DeBonne by the death of his father in 1760, three years before the treaty of Paris, and, of course, while P. Amable, whether regarded then as a French or a British subject, had a perfect right to take by inheritance. This is proved by Judge Badgley's dep., (*See printed case*, *fols.* 645, 649), and is too obvious for argument.

After that treaty the land was within the acknowledged jurisdiction of Virginia, then an English colony, until the 1st of March, 1784, the date of her deed of cession; and was, in contemplation of law, American territory from the 4th of July, 1776.

Alienage, as to the De Bonne Moiety.

The rights of Pierre Amable as a French subject were protected by

Art. 37 of the Capitulation of Montreal, of Sept. 8, 1760, which declares that "the lords of manors, the military and civil officers, the Canadians as well in the town as in the country, the French trading in the whole extent of the colony of Canada, and all other persons whatsoever, shall preserve the entire peaceable property and possession of their *goods, noble and ignoble, movable and immovable*, furs and other effects, even their ships; *they shall not be touched, nor the least damage done to them, on any pretense whatsoever.* They shall have liberty to keep, let, or sell them, as well to the French as to the English; to take away the produce of them in bills of exchange, furs, specie, or other returns, whenever they shall judge proper to go to France, paying their freight, as in the 26th Art. They shall also have the furs which are in the *posts above*, and which belong to them, and may be on the way to Montreal, and for this purpose they shall have leave to send, this year or the next, canoes fitted out to fetch such of the said furs as shall have remained in those posts."—(*Entick's Hist. Late War, vol.* 4, *p.* 475).

The word *biens*, here translated *goods*, is, in fact, a technical law term signifying property, and only thus can it be properly read with its context. *Biens nobles et roturiers—meubles et immeubles; i. e.*, property noble or manorial, or property seigniorial, belonging to the seigniors; and property *roturier*, or of the *terre tenants*: property movable and immovable—property real and pe sonal.

Mr. Bancroft (4 *Hist. U. S., p.* 361), remarks that this capitulation included all Canada, which was said to extend to the crest of land dividing the branches of Erie and Michigan from those of the Miami, the Wabash, and the Illinois rivers.

By the second article of the preliminary articles of peace between the Kings of Great Britain, France, and Spain, of Nov. 3d, 1762, (*found in 5th Entick*, 439, 440), the King of Great Britain, after agreeing to guarantee the liberty of the Catholic religion to the French Canadians, further agrees—"That the French inhabitants, or others, who would have been subjects of the most Christian King in Canada, may retire in all safety and freedom wherever they please, and may sell their estates, provided it be to his Britannic Majesty's subjects, and transport their effects, as well as their persons, without being restrained in their emigration under any pretense whatsoever, except debts and criminal prosecutions; the term limited for this emigration being fixed to the space of eighteen months, to be computed from the day of the ratification of the definitive treaty." —(*See Jenkinson's Coll., vol.* 3, *and Martens vol.* , *p.* , *for the French*).

The same clause is copied, word for word, into the definitive treaty of Paris of 10th Feb., 1763, between the same powers.—(5 *Entick*, 452-'3; *Jenkinson ubi supra; Martens*).

The two treaties severally cede and guaranty Canada to the Crown of Great Britain, and thus that power maintained its conquest of Canada.

They have been held to confirm to the inhabitants their lands, (*Judge Woodward's Letter, p.* 10, *in Woodward Code*); and clearly the Act of Virginia of 1778 guaranteed their property.

But, in reality, no treaty was necessary for the protection of the conquered people. The change of sovereignty did not affect the rights of private property, but the title remained unchanged by the conquest.

Wilcox vs. *Wilcox*, 2 *Lower Canada Jurist*, *p.* 1.
United States vs. *Perchman*, 7 *Pet.* 438.
Halleck's International L., and L. of *War*, p. 836, &c.
Strother vs. *Lucas*, 12 Pet. 438.
Soulard vs. *United States*, 4 Pet. 512.
See, also, 9 Pet. 137—147—733; 7 Pet. 51.

was no such law in the *locus*, the "principles antecedently granted" in the article must, according to the plain intimation of Judge Marshall in Chirac's case, continue to operate in favor of the heirs of Gaspard.

Thus both branches of the claim are entirely freed from the objection of alienage.

But, without relying upon treaties, we claim that the articles of capitulation of Montreal secured both to De Bonne and de R. "the entire peaceable property and possession of their goods, movable and immovable, which was not to be touched—*i. e.*, taken possession of—nor any damage done to them under any pretense whatever."—(*Art.* 37).

The subsequent treaties of 1762 and 1763 are both based upon this capitulation; and Great Britain could not, in honor and honesty, deprive them of their property. It was the guaranty of the British crown in favor of its conquered subjects, and was never annulled. It followed the title when Great Britain and the United States settled their boundaries in 1782 and 1783. It was equally obligatory upon Virginia after the peace, in the same sense, and also upon the United States as the common government for the future.

Vattel B., 2, *ch.* 14, §§ 208, 212.
Wheat. Interl. L., 473.

Wheaton (Id. 318) remarks that "the capitulation of towns and provinces does not need the ratification of the sovereign, unless it be expressly reserved."

Besides, by the laws of war, the conqueror is bound to protect the property of his conquered subjects.—(*Johnson vs. McIntire*, 8 *Wheat.*, 543; 5 *Cond.*, 527.

If these decisions are correct, it would seem that respondents' witness, *Sanborn*, is mistaken when he swears (*printed case, fol.* 1085, *etc.*), that the title of the Chevalier de R. passed to the British crown, *ipso facto*, on his leaving Canada, and that his heir, Gaspard, took nothing by descent on his death, in 1786.

See Strother vs. Lucas, 12 Pet., 438.
Halleck, 837, and cases there cited.

Again: The common law of England as to alienage did not prevail in Canada, but the French laws of the colony were preserved by the Quebec Act of 1774; and those laws allowed aliens to purchase and hold lands during their lifetime; and alienage can only be established upon a judicial proceeding and sentence. (*See Judge Badgley's dep., printed case, pp.* 201, 202, 203). De R. was also seignior of La Chenay and Repentigny. The crown never disturbed him, and in 1766 he sold the former to Maj. Christie, of the British army.—(*See printed case, p.* 352 *to* 365).

IV.

Are the petitioners bound to do more, as against the United States, than to prove that the *title*, which emanated from New France, was valid? We insist they are not.

The first clause of the Act of Congress of 1860 requires them to set forth the names of the "adverse claimants," and to pray "that the validity of the title may be inquired into and decided under the laws of nations, and the laws, usages and customs of the country, from which the same was derived, and *the treaties and laws of the United States.*"

Then follows a special clause applicable solely to the issue between them and the United States. It provides that the "said court is hereby authorized to examine the same, (i. e., the petition and evidence,) and in adjudicating the question of the validity of the title as against the United States, *to be governed by the laws of nations and of the country from which the title was derived; and also, by the principles, so far as they are applicable, recognized in the Act of Congress approved May 26th*, 1824."

In this special clause the expression, "the treaties and laws of the United States," found in the former, is dropped, and the particular question of the validity of the title as against the United States is to be decided not according to the treaties and laws of the United States, but according to the laws of nations, and the country from which the title was derived, and the principles of the Act of 1824, so far as applicable. Those treaties and laws are not to be resorted to on this particular question, but only the laws of nations and New France. If by these laws the grant be found valid, then, as provided in Sec. 2, the petitioners are to receive land warrants for so much of the tract as shall have been disposed of by the United States, etc.

There can be no doubt, then, as to *what laws* are to determine the validity of the title; and the question of moment is whether the laws referred to were such only as were in force and had effect upon the title at the *time it emanated*, or whether the intention of Congress was to allow the laws of New France, of a subsequent date and inconsistent with the former, to annul the title? In other words, are these laws only such as were in force at the emanation and completion of the title, or should they embrace subsequent laws?

Congress could not have intended to embrace such subsequent laws. Such a construction would import into the United States the whole of the Canada land Code down to the present time, and allow it to be applied to *locus*, and would subject the title to any change which those laws may have wrought in respect to descents, levy and sale for debts, etc., etc.

Plainly, Congress could not have intended this; and the language—"*the Court is to be governed by the laws of nations and of the country from which the title was derived*," indicates that the validity of the title is to be tested as it stood at the time of its "derivation," by the laws then in force.

The validity of the title as it existed then, and under those laws, is, it is insisted, the plain and natural meaning of the clause.

But the Court is to be governed, also, by the principles, so far as they are applicable, recognized in the Act of 1824.

Those "principles" can mean only the provisions of the Act, and the legal consequences flowing from them.

That Act did not apply at all to cases where the title was complete and perfect under the foreign government but only to inchoate or unperfected titles.

Clark vs. *Courtney*, 5 *Pet.* 354, 373.
United States vs. *Reynes*, 9 *How.* 144, '5, '6, '7.
Glen vs. *United States*, 13 *How.* 259.
United States vs. *Roselius*, 15 *How.* 31—'5.

But it applied to cases of *concessions*, and plainly embraced the concession in this case, but only the concession. The Act does not refer to the *ratification*, which was dated in 1751, but only to the "*alleged grant* in 1750," *i. e.*, the concession.

Had the Court found that the concession of Oct. 18th, 1750, was valid, but failed to find any royal confirmation of it, then the Act of 1824 would have been applicable to the concession, and the Court could have gone into an inquiry whether upon "the *principles of Justice*" as expressed in the Act of 1824, the petitioners ought to recover.

As it was possible they might fail to prove the concession, so it was possible they might fail to prove the ratification, which is the perfect title.

In the latter event Congress intended the claim should be placed upon the same footing with the inchoate titles of the Act of 1824; and therefore, they say that that Act shall govern only so far as its principles, that is, the rules of decision on the merits of a case of imperfect title are applicable to the facts of this case.

The language of the Act of 1860 surely admits that some, at least, of the principles of the Act of 1824 may *not* be applicable to those facts.

The principles thus excepted must include those which apply to ~~an im~~ perfect title.

Congress did not undertake to contest a once perfect and complete title; and adopted the policy of confirming it without inquiring into the facts of possession or performance of conditions.

This was the policy of Congress in reference to the territory of Michigan under the Act of 1804. (2 *U. S. Stats. at large, p.* 177).

Again: the omission of the words "*treaties and laws of the United States*," shows that it was not the purpose of Congress on the issue between them and these private persons to resort to any Act of Congress or treaty of the United States, but only to stand upon the *laws of nations and the laws of New France.*

Upon this issue they waive all other rules and all other laws; and if by them the title was valid as against the claim set up by the Government, the petitioners are to have their warrants, etc.

If this be the true interpretation of the Act, it is a waiver by the United States of all defence on the ground of "prescription" and "abandonment;" although a private party, claiming adversely against the petitioners, might, under the first or general clause, set up such a defence against the petitioners. But there is no such party. The bill alleges there is none, and none is proved to exist.

The Government puts itself upon this ground; and says to them: Was your title good by the laws of New France when it emanated? and did the laws of nations as against us protect that title in you or those you represent when the territory came into the possession of the United States?

If so, the land is yours, except what we have disposed of, and for that we will give you land warrants.

Now the petition is required to set forth the "nature of the claim," and the names, as near as may be, of all persons claiming adversely, and is to pray that the validity of the title may be inquired into and decided under the laws of nations, the *laws, usages*, and customs of New France, "*and the treaties and laws of the United States.*"

The object of here inserting the words, "treaties and laws of the United States," was doubtless to give to such adverse claimants any protection afforded by these treaties and laws, and to require the Court to apply them *as between such adverse claimants and the petitioners.* Between persons claiming in opposition to the title, or claiming to be in possession under it, it was certainly just and fit that resort should be had to those treaties and laws, while as between the representatives and the United States the case was entirely different; for it would have been

unjust for the Government of the United States to become a party to a suit respecting title claimed to be derived from another Government and to make *its own rules for the decision of that question* upon the merits.

It cannot be denied that the generality of the language prescribing the form of the prayer of the petition was sufficient to authorize the Court to determine any question that might arise in the case, whether between the representatives and the United States, or between such representatives and third persons claiming the land; and it seems impossible to assign any other reason than the one we have given for the enactment of this specific and particular clause, defining what law shall govern as between the United States and the representatives on the question of the *validity of the title* as against the United States. And thus the reason for dropping the words treaties and laws of the United States becomes obvious.

The words treaties and laws of the United States were dropped *ex industriâ*, and for the reason that the United States had no treaties or laws at the time of the "alleged grant" in 1750, and did not yet constitute a nation. Had Congress, instead of omitting these words, inserted them in the second clause the Court would have had to inquire and determine whether the title was valid according to any law or treaty of the United States, however modern; and would, in passing upon the *present* validity of the title, have been compelled to consider whether, *since* its emanation anything had occurred to defeat it, such as lapse of time or other matter of defeasance; but as the Court is upon that question plainly not allowed to resort to such laws or treaties, is it not obvious that Congress intended the title should be judged of as of the date of its emanation? Why else would they have subjected it to the test only of the laws of nations and of the country from which it was derived? Was it not their intention that, in point of time, the inquiry as against them should be confined to that period and that they would raise no question as to the loss or defeat of this title by lapse of time or non-occupancy?—in short, that if the original title was valid by the laws of New France, it should be confirmed so far as the United States are concerned?—leaving, under the first clause, all claims of private persons to portions of the tract, founded on intermediate grants from the original grantees, or upon occupancy, to be determined "under the laws of nations, the laws, usages, and customs of the country from which the same was derived, and the treaties and laws of the United States." If this be so, then all that is said about abandonment and prescription, and escheat for alienage, has no weight.

And it seems to us that such is the true and natural construction of the language of the Act. The Court, after being satisfied that the petitioners are the legal representatives of the two concessees in respect to the land, is not authorized to entertain any other question, except as to the validity of the title as against the United States. Section 2 throws further light upon this question. It declares that, "in case of a final decree in favor of the validity of the grant, it shall not be construed to affect, or in any way impair, the sales made by the United States of parts of the tract, but for the area of any such adverse claims the representatives shall receive land warrants," etc. Does not this clause contemplate that, after the Court shall be satisfied that the grant was valid, it should not be at liberty to entertain any objection unconnected with the grant, and arising at a subsequent date? To allow any such objection would be to prohibit the Commissioner of the General Land Office to do what the Act commands him to do the moment the Court has found the grant to have been valid—*i. e.*, to issue the land warrants.

whether complete or incomplete, and upon the questions of inhabitation and cultivation.

Florida.—Act of 1822, (Id., vol. 3, pp. 709-717), is the same in substance as the Act relating to Louisiana.

California.—(Id., vol. 9, p. 631). Sec. 8 of this Act requires all persons claiming lands by virtue of any right or title derived from the Spanish or Mexican Government, to present the same to the Commissioners with such documentary evidence and testimony of witnesses as the claimant relies upon in support of his claim. The Act is plainly an assertion by the United States of their right to all the land in California, the title to which should not be supported by the claimant's evidence. It threw the *onus* upon him and gave the presumption of ownership to the Government. This was settled in *United States vs. Fossatt*, 21 *How.*, 448.

Now, Virginia, and the United States held possession of the territory since the 4th of July, 1776—that is, for eighty-four years before the passage of the Act of 1860—the United States treating the tract as their own, and as having been a part of the public domain of France and afterwards of Virginia.

Virginia, however, was not a purchaser; she took her jurisdiction under the charter of James I.; but as she had never had actual possession she received it, of course, subject by the laws of nations to the private titles France had granted. Great Britain by her conquest and treaties acquired authority over the tract subject by the same laws to the same private title; and Virginia by her deed of cession gave jurisdiction to the United States subject to the same titles. Thus, the United States took as *assignee*, chargeable with *notice* of the grant, and liable in justice and honor to recognize and allow whatever Great Britain or Virginia was bound to recognize and allow, and indeed bound by whatever either of them had done while exercising sovereignty over the region for the protection of the owners. They found, as we show, white persons in possession of the seigniory. They had no ground to presume they were there without right. Finding them there they were bound to presume they held, or claimed to hold, under a legal grant from some sovereignty, either British or French, and that the persons in possession held under that grant either as tenants or assignees of the original grantees, to whose grant the possession was referable. Such is the presumption of law. (4 *Kent's Com.* 179).

If this be so, with what justice can the United States set up to be the owners by lapse of time?

Virginia was bound by the capitulation of 1760, and by the treaties of 1762 and 1763, and chargeable with notice of the grant made by the King of France; and she recognized her obligation by her Act of 1778 and by her deed of cession.

With full knowledge of all this could Congress have intended, by the Act of 1860, to claim title by lapse of time?

Again: that Act expressly saves and excepts out of its operation every parcel of land affected by "any adverse scales, claims, or other rights which have been recognized by the United States within the limits of said claim, or which under any law of the United States may have heretofore been brought to the notice of the Land Commissioners or any of the Land Officers in Michigan, or any of the land granted to the State of Michigan, or occupied by it for the Saut Ste. Marie canal, its tow-path and fixtures."

Here are three classes of lands which cannot be recovered by the petitioners, viz:

1. Those parcels which the United States have sold, and the private claims which have been admitted by them; and all the *swamp* lands secured to the State by the Act of Sept. 28, 1850, and they occupy full one-half or the entire tract, as noted on the official maps in the Land Office.

2. Those which have been *brought to the notice* of the Land Commissioner under the various ancient Acts of Congress above referred to, or the Act of 1850, (9 *L. and B.*, 469), establishing a Land Office in the Lake Superior Land District.

3. The route of the canal and tow-path, and all lands granted to the State by the Act of Aug., 1852, (10 *L. and B.*, 35), for its construction.

These lands are expressly excepted from the effect of a decree "in favor of the validity of the grant." Of course, the Court has not the means of designating these lands. That duty is expressly conferred upon the General Land Office, which, having done so, is required to perform its other duty of issuing warrants for the same area of land. With these two duties the Court has nothing to do. The whole extent of its power is to ascertain the representative character of the petitioners and the validity of the title or grant.

Now, had it been the intention of Congress to claim by 'abandonment and prescription,' would they have made this special saving and exception? They knew the claim dated back more than a *hundred years*, for the Act speaks of the "*alleged grant in* 1750;" and, they know, therefore, that no claimant in possession, [redacted], could by a private suit be ousted or disturbed by these representatives. Against the latter they all could set up lapse of time successfully, and therefore *needed no such exception* for their protection; and they knew that if mere non-occupation by the grantees and their representatives afforded the United States a good ground for continuing to hold possession, they themselves were protected by exactly the *same state of facts:* indeed, if they intended to avail themselves of this great lapse of time and non-occupancy, the passage of the Act was a worse than useless ceremony, for it inaugurated a law-suit which Congress *knew* must fail, if mere lapse of time was available as a defence.

No, such could not have been the intention. The reasonable and obvious purpose of Congress was to give to the claimants their land if they proved a valid original title [redacted] the French Government, reserving to all persons having claims under the authority of the United States their right and title, and to make good to the representatives the loss by giving them an equivalent in land warrants.

Many of the claims protected by this exception were of very ancient date, and were acted upon by the Commissioners under the Act of Feb. 21, 1823, as will be seen in the *7th Vol.* of the Report of the Commissioners on the "*Claims at Saut Ste. Marie*," all founded on occupancy, which in some instances was claimed to have commenced nearly *a century before the passage of the Act.*

See Rep, No, 42, [redacted]th Cong., 1st Sess. Com. Pub. Lands, H. Rep's. p. 451, and particularly the Claim of the Messrs. Warren, p. 463, 4, and the testimony of *John Johnston* and *Michael Cadotte.*

Now, let us look at the posture of the case after proof of the validity of the grant has been made, if the defence of abandonment and prescription by the United States is entertained: The Court is well satisfied that the original grant was valid and perfect, giving a complete right of possession and enjoyment "*in perpetuity*," as the grant expresses it.

But the Court proceeds to allow the grant to be utterly defeated by an alleged Act of abandonment of indefinite subsequent date, and declares that although thus satisfied, the claimants have lost their once valid title, and are, therefore, not authorized "to receive the warrants."

Is it not clear that, if such a defence is permitted and successfully made out by proof, the "*question of the validity of the title*"—"*the validity of the claim*"—"*the validity of the grant,*" (four times used in the Act), becomes a perfectly *immaterial question?*—and that the question of *possession* is the only true one? Is not the paper title thus treated as of no importance whatever?

But it may be said that by the validity of the title the Act of Congress intends the *present* and not merely the former validity of the title, and that to make out a valid title the proof must show that the ancient formal title has been kept alive and in vigor. Was this the meaning of Congress? Such is not their language; such was not their policy in the Michigan Act of 1805, nor in the Missouri Act of 1824.

Virginia took actual possession of the N. W. territory in 1778 and 1779, under Col. George Rogers Clark. He captured port Vincennes in Feb. '79, and made a prisoner of Hamilton, the British Governor of Detroit, and sent him to Virginia. (1 Marshall's Life of Washington, 284; Allbach's Western Annals, 263 to 295).

The United States have claimed to be the rightful owners of the tract since the cession by Virginia, and were in the *actual possession* of it from July, 1796, when the British garrison was withdrawn from the fort at the *Saut, a de jure* possession of 76 and an actual possession of 64 years—claiming and using the tract for their own purposes.

The construction contended for plainly implies that *possession* by the grantees or their representatives was and is essential to this *present* valid title. But how absurd to enact such a law in their own favor while the United States well knew that they, and not we, had possession for three quarters of a century,—they using it and selling it in spite of us, the lawful owners. Besides, the most natural meaning of the expression, "validity of the title"—"validity of the grant"—is the legal regularity and force of the original title papers referred to. We say a deed barred by the statute of limitations or matter *ex post facto*, is not good; but seldom say it is not valid. A "valid deed," a "valid bond," a "valid note," a "valid agreement," a "valid contract," refer most usually, to say the least, to the effect of the instrument at the time it is made, and not to its effect when destroyed or impaired by subsequent matter.

Again: to assure ourselves of the intention of Congress in passing the Act of 1860, we are authorized to look into the facts and ascertain what notice and knowledge the Government of the United States had respecting this claim, and of the title in controversy, and what were its obligations.

Congress knew, of course, that the United States held their pretended right of occupancy from Virginia; that France had had the actual possession of the country from its first discovery and formal occupation by *Talon* and *St. Lusson* in the Spring of 1671, (*Relations des Jesuites, Vol.* 3, 1671, *p.* 26), down to the capitulation of Montreal, Sept. 8, 1760, or, perhaps, down to the preliminary treaty of peace of Nov. 3d, 1762; and knew the contents of those documents as well as of the treaty of Paris of Feb. 10, 1763:

That by the Act of 14 George III., c. 83, commonly known as the 'Quebec Act,' (1774), the whole region north of Lakes Ontario and Erie, and of the Ohio river, and east of the Mississippi up to the possessions of the Hudson's Bay Co., were annexed to the province at Quebec, subject

to the King's pleasure, (*see the Act in Vol. XXX., Brit. Stats. at large, p.* 549), by the 3d Section of which, all rights of property in lands were declared "*to remain and be in force, and to have effect as if this Act had never been made:*"

And the same Act, Sec. 10, secured to the owners of any property in the province, real or personal, the right of alienation by deed or will, the will to be executed according to the laws of Canada or the forms prescribed by the laws of England:

That Virginia in 1778 had, as before stated, created the county of Illinois and guaranteed the protection of property and other civil rights.

That neither England nor Virginia granted lands subject to feudal rights and services.

That by the ordinance of 1787, article 2, no person could be deprived of his liberty or property but by the judgment of his peers or the law of the land.

That under the Act of February 21, 1823, the Commissioners had proceeded to examine and pass upon claims to land lying at the Sault Ste Marie in the county of Michillimackinac and had actually entertained numerous claims to land there, embraced in this identical tract, (*see the report last above referred to*, p. 451, vol. or part No. 7), and had reported to the Secretary of the Treasury the evidence laid before them in the fall of 1823, of "occupation."

They knew that in order to prevent patents issuing for lands thus claimed, the patent from the King of France, of the tract in controversy, had been presented to Mr. Graham, the Commissioner of the general land office, before the 27th of January, 1825, (see said report No. 42, p. 4), who in his letter to the Secretary of the Treasury of November, 1825, admits that fact. He says: "It may be proper to state that a grant from the King of France for the land at the Sault Ste Marie was presented to this office with the view to prevent the issuing of patents for those lands, but the reports of the Commissioners having been previously transmitted to Congress and referred to the committee of public lands, the person presenting the grant was recommended to deposit it with the chairman of that committee."

They knew that on the 7th of December, 1826, *John Sherriff*, as the attorney of *Mrs. Agnes Slacke* presented her protest or caveat against the land being sold by the United States, in which protest she enumerates as her title papers the concession of October 18, 1750, the royal ratification of June 24, 1751, the deed from *P. A. De Bonne* to Caldwell, the deed from *Caldwell* to *Noble*, and the will of *John Slacke*, her late husband: (*see for a copy of this caveat printed case, pp.* 57, 58); that by the Act of Congress of April 17, 1828, (4 L. & B. 260), it had been enacted "that the claims purporting to be confirmed or recommended for confirmation by the commissioners appointed to carry into effect "An Act to revive the Act of 21st February, 1823," which are contained in vols. 1, 3, 6, 8 and 9 of said reports be and the same are hereby confirmed."

It may be here remarked that the designed omission of said vol. 7 of this report containing as it did a large number of private land claims, all lying within the undoubted boundaries of this seigniory is a fact of great significance, showing beyond doubt that the refusal of Congress to confirm them was based upon the very fact that they all fell within the "*grant*" which had been presented to Mr. Graham more than four years before and that consequently it was unjust to confirm them. They plainly intended not to intertere with that "grant." It is true that General Cass' Indian treaty of 16th June, 1820, (7 *L. & B.* 206), purporting to be a *cession* by

the Chippewa tribe of sixteen square miles, including the village of Ste Marie and lying wholly within the seigniory, had been entered into; but this affords no imaginable reason for that studied omission in the Act of 1828. Those private claims were based exclusively upon *settlement and occupation*, and this supposed extinguishment of the Indian title was rather a reason for than against their confirmation, as the government could in that case have confirmed them without doing injustice to the Indians.

But the government also knew of the existence of the Act of September 26, 1850, for the settlement of land claims at the Saut Ste Marie. The 3d section of this Act deserves attention. It authorizes all persons, or their "legal representatives," who are the *bona fide* claimants of the tracts entered in sai i vol. 7, to present a sworn notice of their claims; and allows the board to make use of the *testimony contained in that document*, in passing upon these claims. It is of course, so far, a recognition of the truth of the testimony. Under this Act the board confirmed 121 claims at the Sault, all on the Seigniory. (*See MS. doc. from the general land office, used on the hearing*).

The government also knew that on the 15th of December, 1826, Mrs. Slacke through Mr. Cambreling, of New York, presented to the House Representatives her memorial asking for a recogonition of this claim: (*see Jour. House Reps. 2d Sess. 19th Cong. p.* 59).

That on the 2d January, 1827, Mr. Buckner of Kentucky made a report upon it, (*found in Dickens and Allen's State papers, vol.* 4 *of Pub. Lands, p.* 863.)

This report admits that the Commissioners had before them, 1st. the concession of October 18, 1750, registered at Quebec; 2d. the brevet of ratification of Louis XV of June 24, 1751, recorded at Quebec; 3d. an authenticated copy of the deed of *P. A. De Bonne*, of July 12, 1796, to *James Caldwell*, of an undivided moiety; 4th. copy of deed dated July 18, 1798, from *Caldwell* to *Noble* of an undivided half; 5th. *A. Noble's* will, recorded July 22, 1814; 6th. authenticated copies of the will and codicil of *John Slacke*; all which documents correspond exactly with those we produce on the same subjects.

The committee hint at the following objections: 1st, that there was before them no proof that the grantees were ever in actual possession; 2d. that Agnes Slacke alone petitions, DeRepentigny not being represented; 3d. that there was no proof of P. A. De Bonne's heirship; and for these reasons they recommend the rejection of the claim, "without however intending to give any opinion upon the merits of the claim attempted to be set up."

The government was also aware that on the 20th December, 1833, the 19th December, 1834, and the 5th January, 1836, Mrs. Slacke presented her petition in the Senate, asking a confirmation of her title, in which she enumerates all the above documents as her proofs in favor of her claim:— (*It is the same document referred to in No.* 58 *of the list of documents, p.* 104 *of printed case, but not returned by the clerk.*)

They also knew that on the 14th of January, 1841, Mrs. Slacke again presented her memorial in the Senate, which is word for word the same as the one last referred to, and found, *vol.* 3 (1840 *and* 1841) *of Senate documents, 2d sess. 26th Cong. No.* 77.

That on the same day *Louise, Pauline, Lizette, Antoinette and Josephine DeRepentigny* and their mother *Aimee DeGantheaume*, widow of *Camille*, by their attorney C. N. Violet, presented to the Senate their petition for the same object; in which they submit as proofs: 1st. the

original concession; 2d. the brevet of ratification; 3d. documents showing the death of the old Chevalier; the fact that Louis Gaspard was his only child who married at Guadaloupe and left three children, *Louis, Theodore and Camille;* the death of Louis and Theodore without posterity; the marriage of Camille, April 19, 1814, and his death April 1, 1820, leaving four children, a male and three females; and 4th. the protest entered at the general land office December 7, 1326, (*this last found in printed case pp. 57 and 58*). This memorial is found in the last cited vol. Doc. 78.

They knew that in the summer of 1846 Mr. Breeze from the Senate committee on public lands made a report, in which he states that "from the imperfect examination they have been able to give the subject referred to them they are inclined to the opinion that on the admission that the papers submitted are genuine, the petitioners have proven a grant of the lands claimed and by a competent authority; but whether valid at this time against the government the committee are not now prepared to express a definite opinion. There being no time to examine it more fully, the committee ask to be discharged from the farther consideration of it, and that in the mean time the memorial, with an abstract of the title and evidence be printed with this report for the use of the Senate for its future action." To this report is attached an exact copy of Mrs. Slacke's memorial above referred to; and the document is numbered 487, *Senate Docs., 1st Sess. 29th Congress.*

And they knew also, that in April, 1858, Mr. Benjamin, from the committee on private land claims in the Senate reported to that body "that on an examination of the titles filed by the memorialists, your committee is *satisfied of the authenticity of the titles and of their legal validity. They form a complete chain, emanating directly from the King;* and your committee would feel no hesitation in recommending the confirmation, but for the fact of a former adverse report from a committee of the Senate," &c., &c. (*See Rep. Com. 179, 1st Sess. 35th Cong. Senate*):

This report was accompanied by a bill (No. 259) which was passed by both houses and became a law April 19, 1860, only one amendment being made which was in the following words, to come in after the word Michigan, in section 2, "or any of the lands granted to the State of Michigan or occupied by it for the Sault Ste Marie Canal, its tow-path and appurtenances."

The author of the report leaves no doubt as to what he meant by the "validity of the title." He used the expression in the same sense in the bill he drew and reported at the same time.

With all these facts before them, is it not inconceivable that Congress, in passing the Act intended to rely upon the objection of abandonment and prescription? although not one provision, word or hint is contained in the Act indicating such a purpose; a purpose which if sustained by law and fact utterly defeats us? Did they intend to say to the claimants, "True, you hold the legal title emanating directly from the King of France; true, your property is protected by the very terms of the capitulation of Montreal, by the treaties of 1762 and 1763, by the Quebec Act of 1774, by the Act of Virginia of 1778 and by her deed of cession of 1784, by the treaties between France and the United States of 1778 and 1800, by the 9th article of the treaty with Great Britain of 1794; true, your private property is protected by the general laws of nations which guarantees their private property to individuals of a country conquered or acquired; true, the constitution itself says private property shall not be taken for public use without due compensation; yet it is our purpose to insist in our own court that you and your ancestors have abandoned and renounced

the possession of this property and we intend to urge against you a rule of limitation and prescription by which we will hold it as against you and your legal title. We well knew you had the legal title, but we knew at the same time that we held the land, not by grant or cession, but by mere *lapse of time*. Such is our reply and our only reply to your legal grant." It is not easy to conceive of an artifice so little worthy of a government, so wanting in frankness and fair dealing.

But as the answer sets up abandonment and prescription as one ground of defense in favor of the government, we meet it by proofs. But at the outset we deny that there is any law of the United States assuming to give to the Government this right to the lands of private owners, growing out of lapse of time. Under the laws of nations there is no prescription as between a government and its subjects, although in municipal codes it is allowed as between private persons for the sake of repose. Ordinarily, it is the sovereign political power that gives the title. How strange would be the anomaly of its retaining the right to use its omnipotent power to turn the grantee out and resume the possession as against his heirs at law. It is a rule of the common law that no prescription or limitation can be alleged against the King. Who ever heard of the King alleging it in his own favor?

We deny the existence of such a rule in favor of the United States. If there be such, what is the period of limitation? Who enacted the law? Where do we find it recognized in a federal decision?

But in point of fact, the grantees entered into possession and held and cultivated the tract for several years. The proofs of it are clear and conclusive.

And this brings me to the consideration of my 5th question.

V.

Have the grantees or their representatives been guilty of any act of omission or commission whereby they or any of them have lost the title?

The grant was no gratuity. By its terms, the grantees were required to improve it and to occupy and possess it by their tenants, ("*de la mettre en valeur et d'y faire tenir feu et lieu par leur tenanciers*"). The principal object of this improvement and settlement is indicated in the concession, and was one of great public importance, viz: "that settlements in that place would be more useful, as voyageurs from the neighboring posts and from the *Western sea* would there find a safe retreat, and by the care and precaution which the grantees propose to take, would destroy in those parts the *trade of the Indians with the English*."

It is a historical fact that from the treaty of Aix-la-Chapelle in 1748, there had been disturbances of a threatening character between the English and French colonies in America which ended in the formal war known as the French or 'seven years war,' of which England did not make her declaration until May, 1756, the year after the battle of the Monongahela under Braddock and the then Colonel Washington.

4 *Bancroft's Hist.* 233.
Johnson v. McIntosh, 8 *Wheat.* 543, (5 *Cond.* 532, 533).

The Chevelier de Repentigny left Montreal for Michillimacinac August, 1749, having given his aunt a power of attorney: (*Printed case p.* 109).

He was ordered to the Sault Ste Marie by Gov. LaJonquiere in 1750,

as appears by LaJ.'s letter to the minister, dated Quebec, October 5, 1751 : (*Paris Doc.* 15, *p.* 107.) This document sets forth fully the object Governor J. had in view in the establishment at the Sault Ste Marie. It was to afford an asylum to the French voyageurs who were constantly travelling from Quebec and Montreal up the Ottawa river, crossing over the portage to Lake Huron and coasting along its northern shore to the Sault Ste Marie, one of the central points for intercourse with the natives, and which had been taken possession of by the French nearly a century before; and thence visiting the missionary and trading posts on Lake Superior at Point Iroquois, Missipocoton (on the northern shore), Point St. Esprit (now LaPointe), Green Bay, and other places settled by the Jesuits. The time and manner of making these ancient and remote settlements are minutely given in "*Les Relations des Jesuites*," vols. 1, 2 and 3.

The letter of Gov. J. of October 5, 1851, shows that he had directed the Chevalier R. to erect the establishment there at *his own expense*, to build there a *palisade fort as an asylum for the French voyageurs*, and to clear the land for the purpose of affording food for them and the settlers; and the Governor adds: "*the said Sieur de Repentigny has fulfilled in all points the first object of my orders ;*" that is, the building of the fort. He further remarks that "in regard to the second object of his orders (*i. e.* clearing land), the said S[illegible]r de Repentigney has neglected nothing to fulfill it. He arrived too late last year (1750), at the Sault Ste Marie to fortify himself well; however, he secured himself against insult in a sort of fort large enough to receive the traders from Missilimacinac. The weather was dreadful in September, October and November; snow fell one foot deep on the 10th of October, which caused him great delay; he employed his hired men during the whole winter in cutting 1100 pickets of 15 feet for his fort with the doublings, (rendoublages), and the timber necessary for the construction of *three houses*, one of them 30 feet long by 20 feet wide and the other two twenty-five feet long and of the same width as the first. His fort is entirely finished with the exception of a redout of oak which he is to have made twelve feet square, and which shall reach the same distance above the gate of the fort. As soon as his work shall be finished he will send me a plan of his establishment. His fort is 110 feet square.

The said Sieur de Repentigney has observed to me that during the winter he shot a raft of logs down the Saut Ste. Marie, across a spring of warm water. As for cultivation of the land, the Sieur de Repentigney had a bull, two bullocks, three cows, two heifers, one horse and a mare from Michillimacinac. He could not on his arrival, make clearings of land for the work on his fort occupied his hired men. Last spring he cleared off all the small trees and bushes within the range of the fort. He has employed a *Frenchman** who married an *Indian woman* at the Sault Ste Marie to take a piece of land; they have cleared it up and planted it, and without a frost will gather from 30 to 35 sacks of corn, (*ble d' Inde*)."

Here is a clear and full admission by the Governor of Canada that the Chevalier had in good faith entered into possession and at *his own expense* built the fort and three houses for the public accommodation cleared and planted land on the Siegniory and brought there eight head of cattle and two horses.

The receipt of this letter from Gov. J. is acknowledged by the minister and the establishment at that place approved by him, under date

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*Probably old Jean B. Cadotte, hereafter more particularly referred to.

1749, having given his aunt a power of attorney? (*Printed case p. 109*).

He was ordered to the Sault Ste Marie by Gov. LaJonquiere in 1750,

June 16, 1752: (*Paris Doc.* 94, *Id. p.* 106), in a letter to Gov. Duquesne, the successor of LaJonquiere. In this letter the minister says: "In one of my dispatches written last year to M. de LaJonquiere, I remarked to him that I had procured *the approval* of the construction of a fort at the Saut Ste Marie and of the project of cultivating the land there and taking up cattle. I cannot but approve the dispositions which have been made for the completion of this establishment," &c. "As not much other grain but Indian corn can be expected, they must, for a certain time at least attend to this and not persist in expecting to obtain wheat. The care of the cattle must at this post take precedence of the cultivation of the land, because as Detroit and other posts at the south become established, they will furnish grain in abundance to those of the north, which will be able to furnish them cattle, &c., &c.

NOTE.—*Franquet's map* bears date the same year, 1752; may not the minister have directed him to make an actual survey of this siegnory and of the fortification on it?

On the 24th April, 1754, Gov. Duquesne addressed a letter to the Chevelier de R., "commanding at the Sault Ste Marie," in which, after giving him particular instructions respecting the '*wampum belt*' and his intercourse with the Indians, he says: "Besides the private advantage you will derive from the care you give to the culture of your lands, the court will be very thankful to you and I exhort you to give yourself entirely to it by the interest I take in you;" and adds: "continue to keep me informed of what is passing at your post and the progress of the cultivation of the land, of which I shall make proper use." (*Printed case* 50.

In Vol. 10, p. 262, Docs. Rel. Col. Hist., N. Y., is a letter from Gov. Duquesne to Machault, the Colonial Minister, dated Quebec, 13th October, 1754, in which, among other things, he says, "*the Chevalier de Repentigny, who commands at the Saut Ste. Marie, is busily engaged in the settlement of his post, which is essential for stopping all the Indians who come down from Lake Superior to go to Chouequen*, (*Oswego*), but I do not hear it said that this post yields a great revenue."

Note.—De Machault succeeded the minister Rouillé, (who signed the brevet of ratification), in July, 1754, in the colonial department. (*Id. note on p.* 262). *For same letter, duly authenticated, see printed case, p.* 109.

Then we have evidence from the French Government itself, that the Chevalier was actually at the Saut Ste. Marie from some time in 1749 to to October, 1754, engaged in cultivating the fief and building a fort, houses, etc. This evidence is not liable to the objection of being hear-say, but is a direct admission by his Government of that fact.

But there is further proof of occupation:

On the 27th of January, 1756, *at Montreal*, he enters into articles of co-partnership with DeLangy and DeCouagne, for the management of the three trading posts, viz: *Michipocoton*, *Kamanigtigouin* and the *Saut Ste Marie*. By these he puts into the common fund *all his merchandise at said posts*, of which an inventory was to be made out. His two partners were to devote their care and industry to the business of the posts and were not at liberty to *quit the posts*. The partnership was to last from the Spring of 1756 for three years; and as to the post at the Saut the partners might continue it three years longer, *i. e.*, till the Fall of 1762. The peltries were to be brought to Montreal and turned over to Hery their factor. In April 1756 Langy withdrew from the concern and Caron was taken in in his stead. On the 25th of March 1759 the Chevalier gives his wife a full power of attorney to manage all his business, with a power of substitution.

May 29, 1761, his wife authorizes Quenel to receive from Beaujieu de Villemonde at Michillimackinac all the packages of peltries belonging to her husband, *one-third part* of those at the Saut Ste. Marie, derived from the partnership between de Repentigny, Caron and de Couagne, and also those which the Sieur *Cadotte* might have in his hands.

(NOTE.—Cadotte is here treated as a mere employè of the Chevalier).

The partnership was still in existence under the continuation clause, for Madame Repentigny spoke of the packets *derived from it.* It was not to expire until the canoes should reach Montreal *in the Fall of* 1762.

(*For these Articles see printed case, p.* 339, '40, '41, '42; *for the power of attorney, p.* 238, *and power of attorney from Madame R. to Quenel, p.* 115).

In December, 1762, the houses as Mr. Alexander Henry an eye-witness says, were all burnt except Cadotte's, but it does not appear that any peltries were burnt. At this time however the country had changed sovereignties and a British garrison was at the fort.

It thus appears that through his partners and his wife the Chevalier continued in actual possession until the Fall of 1762.

January 1, 1759 he was made a Captain. (*Paris doc.*, 46, *p.* 107).

We next find him at the siege of Quebec in April, 1760, under de Levi in command of a battalion. (*Vol.* 10, *p.* 1088 *Docs. Rel. Hist. of N. Y.*); but hear nothing more of him until we find him recommended for the Cross of St. Louis by, probably, the late Governor of Canada, August 16, 1762, when he is about to start for New Foundland under orders to remove the Indians from that place. (*Paris doc.* 19, *printed case, p.* 113).

In 1765 he furnishes a memorial to the Minister under his own hand setting forth his services, in which he states that his establishment at the Saut Ste. Marie *was burnt in* 1762 by the Indians while his agent in Montreal was endeavoring to sell it, and which he says was rented from the year 1755 for £400 a year. (*Paris doc.* 21, *p.* 111).

On the 19th of May, 1762, Alexander Henry the traveler visited the post and found *Cadotte* there with his Indian wife and his family. (Gov. Duquesne in his letter of 24th of April '54 (*p.* 50) strongly condemns such intermarriages and threatens punishment for them; it is therefore probable that they were unfrequent. Henry describes the fort and says he found four houses there, one for the Governor, one for the Interpreter Cadotte and the other two used for barracks. The only *family was Cadotte's*, whose wife was a Chippeway woman. Henry staid with Cadotte during the winter of 1762—'3, and he says that during the season a small detachment of troops under command of *Lieut. Jemet* arrived to garrison the fort;—he states also that on the 22d of December, 1762, while Cadotte was in possession as Interpreter, a fire broke out and consumed all the houses (except Cadotte's), a part of the stockade, all the provisions for the troops and part of the fish Henry himself had taken. (*See Henry's Travels, p.* 57 *to* 63).

On the 23d of December the troops left the Sault for Michillimackinac, where they arrived on the 8th of March. (*Id.* 64 *to* 67).

During the Spring Henry is made a prisoner at Michillimackinac, in the "Pontiac War," is liberated by a friendly Indian, returns to the Saut in company with Madame Cadotte and finds Cadotte there. (*Id.* 164).

In July 1765 Henry arrives at the Saut from Michillimackinac with goods for the Indians and takes Cadotte in as a partner. (*Id.* 192, '3).

NOTE.—When Mr. Alexander McKenzie was there in '87 or '88 he found there a Canadian trader, receiving, forwarding and storing goods. (*McKenzie's Voyages*, 36, 37). Was not this Cadotte?

It seems clear from this that Cadotte went or was taken to the Saut as the mere employè of the Chevalier Repentigny. In 1750 he and his Indian wife were raising corn on the seigniory; the Chevalier was probably ordered back to Montreal in the Summer of 1754, (*Letter of Duquesne of 24th of April, printed case*, 50) and left in 1755, after which Cadotte must have remained in charge at the post: in 1761 Madame Repentigny treats him as a mere agent of her husband in her power to Quenel; in '62 Henry finds him there in charge of peltries; but it would seem he concealed from Henry the fact that he was in the service of the Chevalier, as Henry's book no where alludes to it or to the fact that the tract was owned by any private person.

Now *Louis Gornon*, a witness 73 years old, states that his wife is a grand-child of old Jean B. Cadotte and a daughter of Jean B. Cadotte, his son; that old Cadotte lived at the Saut Ste Marie and that his wife was an Indian woman; that he, the witness, saw old Cadotte at the Saut Ste Marie during his life, and recollects his death, which he thinks was sixty-five years ago, which would be in 1797; that he has heard his father-in-law J. B. Cadotte, the younger say, that old Cadotte came to the Saut about the same time that a French officer by the name of De Repentigny came there; that they were in some way connected about the fort which the officer had built, and that after the officer went away old Cadotte took possession and ever afterwards held it until it was taken possession of by his son J. B. Cadotte the younger, the father-in-law of witness, and after his death by Madame Gornon's mother, (the widow of J. B. C. the younger.) He says he heard that the buildings in the fort were burned after they came into the possession of old J. B. C. (*See his dep. printed case* 73, *&c.*)

Madame Gornon, the wife of the former witness, sixty-six years old, swears that she is a daughter of J. B. C. the younger, whose wife was a Piquette, and that old C. was her grand-father; that old C.'s wife was an Indian woman of the Saut Ste Marie; that witness' mother claimed a piece of land at the Saut which her father and her grand father had claimed; that she has heard her father or mother say that old J. B. C., her grand father came to this country as a voyageur, that two French officers, one by the name of DeRepentigny, the other by the name of DeBonne came there about the same time; that she had heard her parents or some others say that said officers built a fort or post and that they went away, leaving old J. B. C., her grand father in possession of it; that her grand-father retained possession until he gave it to J. B. C. her father; that her father went away about the year 1810 and left her mother in possession of it; that her grand father was a large furtrader, &c. (*See her dep. printed case* 76, *&c.*)

François X. Biron, another witness examined at the Saut Ste Marie, seventy-five years old, swears that *Michael Cadotte* a nephew of old J. B. C. and father-in-law to the witness, told him that his, Michael's father, came from near Montreal as a voyageur or guide, before the taking of Quebec and about the year 1750, and that old J. B. C.'s wife was an *Indian woman* of the Saut Ste. Marie. On his cross-examination he states that his father-in-law was in the employ of old Cadotte at the Saut for two years, and told him that his uncle, old Cadotte, informed him that there was an officer in the times of the French by the name of de Repentigny who was at the Saut at the time he, old Cadotte, was there; that the *Saut was a seigniory*, including the old fort and a great distance below and above the same, that it belonged to DeBonne long ago before the times of the English, that it had been transferred by DeBonne, *that old Cadotte*

was not sent here (*at the Saut*) *to take charge of the post* but got possession after he came here and commanded the post, and that he was a partner of Alexander Henry; that Michael also told him that old Cadotte had always said this place was a seigniory and belonged to DeBonne who had transferred it, though he does not know to whom. (*See his dep., printed case, p.* 70).

The witness Biron is a man of good education, as he swears, and is the same witness whose testimony is recorded in said Vol. 7 in the above cited report No. 42. To show that old J. B. C. was there before 1760, see also in same report the statement of J. D. Doty, p. 463; do., of John Johnston, p. 464, and of his son Michael Cadotte, p. 464.

This traditionary evidence of Gornon and wife and of Biron is admissible to show the existence of the seigniory and that old Cadotte was the employè of the Chevalier.

Elliott vs. *Pearl*, 10 Pet. 434.
Stockton vs. *Williams*, 1 *Doug. Mich. R.*, 571.

Paris doc. 15 (*printed case, fol.* 359) establishes that the Chevalier had "*employed*" a Frenchman whose wife was an *Indian woman* to take a piece of land and raise Indian corn. We hear of no other such Frenchman, and this statement of Governor Jonquière corroborates the testimony of the three Saut Ste. Marie witnesses.

In a transaction so ancient we submit that this proof of the identity of old Cadotte with the husband of the Indian woman ought to be considered satisfactory; and if so it follows that his possession was our possession and we are entitled to the benefit of it and of that of the grantees under his deed to his two sons of the 24th of May, 1790. (*Printed case p.* 351). This deed conveys to his *legitimate* sons John and Michael a part of the tract which was confirmed by the Commissioners in 1823, to *L. M. and T. W. Warren.* (*See their claim, pp.* 473, '4, '5, '6, '7, '8, *of said Vol.* 7, *Report* 42, *already cited*); and this confirmation was made effectual under the Act of September 26, 1850 cited above. Thus the possession of old Cadotte, which was in truth our possession, has served as the foundation of the *rights of the present occupants* of the tract. It is quite manifest that old Cadotte assumed rights which belonged to the grantees, knowing them to be such, if his grand daughter and her husband and Biron are to be believed; for they all testify that he was a voyageur and a mere servant of the Chevalier.

We have no certain means of knowing the Chevalier's whereabouts from Oct. 1754 to 1762, on his departure for Newfoundland, except that he was made a Captain in 1759 (*Paris Doc.* 46, *printed case*, 107), and that he was at the battle of Sillery under de Levi, April, 1760.

He was engaged in the war against the English. That he did not leave the Saut until 1755 is apparent from his letter to the Minister in which he says he "has commanded and negotiated *six years* among the various nations of Canada," (*printed case p.* 345), that is, 1749 to 1755.

And thus the fact of actual possession, improvement and occupation by himself for six years commencing in 1749, is conclusively proved by the direct as well as the historical and traditionary evidence; and it was a prompt and faithful fulfillment of the *condition subsequent* contained in the ratification, relating to possession.

When a condition has been performed it is thenceforth entirely gone and the thing to which it relates becomes absolute.

2 *Cruise's Dig., p.* 27.

And where the condition does not create but destroys the estate it is to be taken *strictly*.

2 *Cruise's Dig.*, 23.
1 *Int.*, 2196; 2 *Story's Eq. Ch.* 23 *passim.*

Abandonment and Prescription.

What is the rule of law touching rights of property acquired under a claim that it has been abandoned by the owner? I refer to the following authorities to show that the "abandonment" must be on the part of the owner a complete renunciation and giving up of the thing, with intent not henceforth to re-assert any dominion over it.

Grotius, B. II. Ch. 4 §5. 1—5; §6. 1.—2.; §7. 1.—2; §8. 4.; §9. 1.—2.
Kluber's Droit des Gens, (*Paris ed. of* 1861), Sec. 6, Sec. 125, 126, 128.
Vattel, B. 2, Ch. 11, §§144, 145, 146.
1 *Swift's Dig.*, 158; 2 Bl. Com. 263, 268.

Grotius, (§5—5.) says—"In order to found a reasonable prescription of abandonment upon the silence of the owner two things are necessary, one that he knows another has possession of what is his own, the other that he is willing to remain silent although he has entire liberty to speak: for when any one abstains from acting from pure ignorance, this has no effect; and when there appears any other reason to hinder his acting the conjecture drawn from silence has no place." Again, he says—(§9—2), "But it must be remarked, what I have said that the possession must not have been interrupted, that is to say, the thing in question must have been possessed *continuously without* interruption and without contestation; for a possession at intervals is of no use; and the Numidians correctly alleged this exception in a dispute they had with the Carthaginians" etc.

Kluber, Sec. 125, says a "State can acquire nothing by prescription against those who *are not bound by virtue of positive rules to recognize this mode of acquisition.* In order that the occupation may be lawful the thing must be susceptible of exclusive property; *it must belong to nobody.* The State must have the intention of acquiring the property thereof and taking possession of it, that is to say, of placing it entirely at its own disposition and within its physical power." Again—(*Sec.* 126), in order to acquire a thing by means of occupation it is not sufficient merely to have the intention or to attribute to one's self a possession purely mental * * * it is necessary that you be the first to occupy it and it is only on this condition that in acquiring an exclusive right to the thing you impose upon all third persons the obligation to abstain from it."

Vattel says: "It is very evident we cannot plead prescription in opposition to a proprietor who, being for the present unable to prosecute his right, confines himself to a *notification* by any token whatever sufficient to show that it is not his intention to abandon it. *Protests answer this purpose.* * * Every person who commits or omits certain acts *which he cannot commit or omit without renouncing his right*, sufficiently indicates by that commission or omission that it is not his intention to preserve it, unless by an express reservation he declare the contrary."

Pothier, de Prescrip., ch. 4, sec. 2, p. 45, says: "On the contrary, when we have acquired possession of a thing, the intention alone that we

have to possess it suffices to keep us in the possession of it, although we do not detain it corporally, either by ourselves or others.

"The Emperors Diocletian and Maximilian give us this difference—*Licet possessio nudo animo acquiri non possit, tamen solo animo retineri potest.*

"This intention to retain possession is always presumed while a well marked contrary intention is not apparent.

"Hence when a person has abandoned the cultivation of his inheritance he shall not therefore be deemed to have the intention of abandoning the possession thereof; he shall then be presumed to have the intention to retain it, and he shall retain it in fact. This is what the Emperors decree in the law above cited: '*Si ergo prædiorum desertam possessionem non derelinquendi affectione transacto tempore non coluisti, sed metus necessitate culturam eorum distulisti; præjudicium ex transmissi temporis injuria generari non potest.*'

"Paulus, for example of the principle that we retain the possession of a thing by the will alone to retain it without any corporal detention, reports to us this case: '*Saltus* (woods) *hybernos æstivosque animo possidemus, quamvis eos certis temporibus relinquamus.*'

"It is not necessary to preserve the possession of the thing I possess that I should have the positive will to retain the possession thereof; a negative will suffices, that is to say, it suffices that the will I have had to possess it when I had acquired the possession, has not been revoked by a contrary will (intention); *for while it has not been revoked by a contrary intention, it is always deemed to be entertained, and I retain the possession of it unless some one has usurped it from me and dispossessed me of it.*"

If under the statute of 1860 the Court shall entertain the question of abandonment and prescription, we insist that under the circumstances there has been proved no such deliberate and intentional abandonment of the tract as warrants the United States to insist in a Court of Equity upon a prescription.

There Never was an Intention to Abandon it.

The contrary appears from all the actings and doings of the claimants and their ancestors; and the circumstances of their situation fairly and fully excuse them ~~from~~ ceasing their actual occupation of it.

Both grantees were officers in the French army, a fact recited in the grant itself.

The post was very remote and exposed. The French war had been brewing all along the frontier for years, as history shows, rendering occupation difficult and dangerous. Capt. DeBonne, one of the grantees, and a nephew of Gov. La Jonquière, (1 *Wm. Smith's Hist*, *Can.* 221), was, as already shown, killed in De Levi's attempt to retake Quebec in 1760, (Id., ch. 1, p. 320, and 10 Doc. rel. Hist. N. Y., 1075, 1089, 1083, to show that the Chevalier was in the same battle). This is contained in the report of *Vaudreuil*, the Governor General, to the Minister, in his letter of May 3d, 1760. He says (p. 1083): "The battalion of the town of Montreal, commanded by the Sieur de Repentigny, displayed equal courage with the regulars."

DeBonne left his only child and heir-at-law, Pierre Amable, then an infant not two years old (born at Quebec Nov. 25, 1758); By the Act of the

Provincial Parliament of Jan. 1, 1783, this child did not come of age till 1779, during the revolutionary war, during all which P. A. D. was of course an alien enemy of the United States.

But P A. D. was not indifferent to his rights. Before the close of the war, and on the 13th Feb., 1781, he did *faith and homage* for the tract. (*For a copy of this certificate see printed case, p.* 16; *and for the proof, original doc. marked*). This was six weeks after Virginia passed her first act of cession, which bore date Jan. 2d, '81. (*See Com. Report No.* 296, 3 *Sess.*, 27 *Cong., p.* 210, *by Wm. Cost Johnson.* That act was strong evidence, not perhaps of *title*, but against abandonment, and shows clearly an intention not to renounce the claim, and was, under the circumstances, all DeBonne could do; and its acceptance by the British Governor was clear evidence of an official recognition of his title. The homage was suspended, not because D. had no title, but because the brevet of ratification was not produced to the Governor. An authenticated copy was afterwards procured from Paris. (*See Paris doc.* 22, *printed case* 122).

The Chevalier.

The Chevalier was engaged in active service during the French war, and long before its declaration.

1746, May 5, he was sent to Fort Niagara by *Governor Beauharnais* (the maternal grandfather of Napoleon III). (See Ex. 35 of Favarger's dep. printed case 48).

1748, July 11, was sent with a force of French and Indians to make war against New England. (Id. 49).

1749, Aug., he left Montreal for Michillimackinac. (Id. 109).

1750, He was ordered to the Saut Ste. Marie by Gov. La Jonquière. (Id. 107).

1754, April 24, Gov. Duquesne writes him at the Saut Ste. Marie respecting his fort, etc. (Id. 50).

1758, Feb. 15, he is at Montreal acting as an interpreter of Iroquois to Gov. Vaudreuil. (*Id.* 131, *Paris doc.* 95).

1759, Jan. 1, the year Quebec was taken by the British under Wolfe, he is made a captain. (*Id.* 131, *Paris docs.* 46 and 32).

1760, April, he is in the battle under de Levi in command of the Montreal battallion, as above stated.

1762, Aug., he starts for Newfoundland to remove the Indians. (*Ib.* 113, *Paris doc.* 19).

In the spring of 1763 the Pontiac war broke out, in which the whole frontier was desolated by the Indians, from Lake Superior to the wilds of Western Pennsylvania and the Mississippi river, and almost all our frontier posts captured. The garrison at Michillimackinac, within forty miles of the Saut Ste. Marie, was cruelly butchered, at which time there was no white man at that post but old *Jean Batiste Cadotte, whose wife was an Indian woman.* (*See* 5 *Bancroft, ch.* 7; *Parkman's Hist. Pontiac's Conspiracy, chs.* 16, 17, 19, 20, 21; *Alex. Henry's Travels; Allbach's Annals of the West*, 161 to 168). Parkman (p. 322) says, that, except the garrison at Detroit, not a British soldier now remained in the region of the lakes.

These Indian troubles did not cease to agitate the frontier during the whole of the revolutionary war; nor did they cease with the war. It is

well known that the British Government, desirous to bring the boundary of Canada down to the river Ohio, as defined by the Quebec Act of 1774 for the province of Quebec, persisted in withholding from us the Western posts, and stirring up the savages against us; and that Indian wars were incessant down to the conclusion of treaty of Greenville, Aug. 2d, 1795.

Allbach, 656, 661; 16 *Am. State Papers*, 562, 583; 7 *U. S. Stats. at large* 49, *for the treaty.*

It would be absurd to require the grantees to have held possession of this remote and exposed point during all this dangerous period. The Indians loved the French. The protection of that government was withdrawn, and from 1763 down to 1796 at least (the date at which, by the second section of the treaty of commerce of 1794, Great Britain withdrew her troops and surrendered the posts), the place was in the *actual possession* of the English, whom the Indians disliked. Here was *a period of ~~twenty~~ three years* during which it was plainly unsafe to attempt to hold and occupy the tract.

While the revolutionary war was in progress it was unreasonable to expect young DeBonne, a British subject, or the Chevalier, a French subject, to occupy it.

1764, The Chevalier left for France.

1765, June, we find him petitioning the Minister for a pension. (*Ib.* 116, *Paris doc.* 34).

1769, He is appointed to command the depot of troops at the Isle de Re. (*Id.* 116, *Paris doc.* 36).

1772, He is still at the Isle de Re in charge of the depot of troops there, and asking for the rank of colonel and to be sent to the colonies. (*Id., p.* 117, *Paris doc.* 38).

1773, He is made colonel of the regiment de L'Amerique. (*Id.* 118, *Paris doc.* 40).

While a colonel in command of this regiment at the Isle de Re he sends the minister a detailed account of his services, and shows his want of means. (*Id., p.* 344, *Paris doc.* 60).

1775, Feb., his regiment leaves Rochefort for the West Indies. (*Id.* 118, *Paris doc.* 42).

1775, May 12, he writes the Minister in favor of his niece and asks for her an advance upon his brother's salary of 1,200 francs on account of the bankruptcy of the notary *Beauregard*, and showing his own want of means. (*Id.* 130, *Paris doc.* 43). *Note*—This doc. shows that the offer made by Gen. Murray in 1764 to make a M. de Repentigny a major in the provincial troops, was made to a *brother* of the Chevalier and not to himself. (*See Id., p.* 111, *Paris doc.* 20).

1775, Aug., he is appointed a brigadier at Paris. (*Id.* 119, *Paris doc.* 45).

1776, May, he arrives at Fort Royal Martinique, in a man-of-war. (*Id.* 119, *Paris doc.* 49).

1776, July, he arrives at Basseterre, Guadaloupe, and takes command of his regiment. (*Id.* 119, *Paris doc.* 51).

1777, July, still at Guadaloupe with his regiment. (*Id.* 120, *Paris doc.* 56).

1777, July, thanks the Minister for the appointment of his son (Gaspard) as *enseigne de vaisseau.* (*Id. ibid, Paris doc.* 57).

It may be noted here that his son Gaspard had been in the naval service of France from 1770 to 1808. (*Id.* 115, *Paris doc.* 27).

1780, The Chevalier is still in command of his regiment at Guadaloupe,

a part of which he says had been sent to the United States under the Viscount de Noailles at Savannah. (*Id.* 121, *Paris doc.* 62).

1782, He returned to Paris and refused to retire on half-pay. He was then sixty-one years old. (*Id.* 122, *Paris doc* 63).

1783, At Paris, and asks to be appointed field-marshal. (Id. 122, Paris doc. 64).

1783, He is appointed Governor of Senegal on the coast of Africa. (*Id.* 123, *Paris doc.* 23).

1784, He is at Senegal and writes the Minister. (*Id.* 123, *Paris doc.* 67).

1785, At Senegal, he demands a furlough to return to France for his health, his wife having died. (*Id.* 124, *Paris doc.* 68).

1786, May, he writes the Minister from Lagos, Portugal, that he is ill and coming to Paris. (*Id.* 124, *Paris doc.* 70).

1786, Oct. 9. He died at Paris. (*Stip. rel. pedigree*).

We find in Paris doc 29, (*Id.* 112), under the head "State of the property which I possess in Canada," that he had rented out "three leagues of the seigniory for the fur trade until 1760." The partnership deed of Jan. 27, 1756, rented the post at the Saut to the partnership until the fall of 1759 with the privilege of continuing it three years longer, *i. e.*, till the fall of 1762, (Id. 239); the trade was prosecuted by the partners, and we find Mad. Repentigny so late as May 1761 giving to Quenel a power of attorney to receive one-third of the furs from *Cadotte* at the Saut. (*Id.* 115).

This power of attorney is without limitation of time, but we are uninformed how long Quenel acted under it.

Gaspard, Son of the Chevalier.

1753, July 10—Born at Quebec.

1770, Appointed guard of the marine, (*Id.* 115, *Paris doc.* 27.)

1777, Promoted *ensign de vaisseau* when 24 years old (*Ibid.*)

1780, Promoted *Lieutenant de vaisseau* (*Ibid*).
Married at Guadeloupe to Mad'lle Leprovost Duquenel (*Id. Fayel's dep. fol.* 499.

1784, Made Chevalier of St. Louis (*Id.* 115 *Paris doc.* 27.)

1789, His son Camille born at Tours, France.

1794, He is at Martinique, having emigrated (*Id. folios* 551-2, *Mad. Bouille's dep.*)

1798, Aug. 5, letter from Mercadier of New York to Gaspard stating that Caldwell had offered him $8,100 for his half of the tract, (*Id. p.* 346 *for M's letter; p.* 52 *for Gaspard's memorandum on the subject.*)

" Nov, 10, Letter from Gaspard to M. in answer to the above letter from him, refusing to sell to Caldwell, (*Id.* 347).

1804, Oct. 9 and Nov. 1st, letter from Dreuilhet his agent in New York to Gaspard informing him that he will try to obtain the same offer of Caldwell of $8,100 for his half, (*Id, p. p.* 348, 350).

1807, He is employed as *Lieut de Vaisseau*, with rank of *Capitaine de Fort*, at Pointe à Pitre, Guadaloupe.

Between this time and that of his death, which took place July 2, 1808 (*Id.* 115 *Paris doc.* 27), he wrote the minute memorandum, without date, marked as *Favarger's Ex.* 41 (*Id.* 52), in which he says that in

1806 he received a letter from M. Garanne &c., and makes a very careful record of his claim and his negociations.

In the above doc. 27 it is stated that Gaspard had made eleven campains at sea and that he was in two fights sustained by the frigate *La Concorde* Aug. 21, '78 and Feb. 7, '79, in the first of which he was slightly wounded.

But Gaspard had done more than this by way of asserting his rights. On the 31st of January, 1800, while at Martinique he perfected in the office of two notaries an *acte de notorietè* as a sort of protest or declaration *in perpetuam memoriam rei*, in which he states that "the remoteness of the place and other circumstances have until then prevented him from having his rights recognized and that he now desires to exercise them," (*Id.* 114.)

Condition of the Saut Ste Marie from the close of the American Revolution.

During the whole of the revolutionary war the region northwest of the Ohio was in posession of the British except post Vincennes on the Wabash. The Saut Ste Marie, Michillimackinac and other feeble settlements on the upper lakes were unknown and have no history during the period; and so remained until Schoolcraft visited them in 1820. He found them werely fur-trading establishments. He says of the Saut, "the dwelling houses on the north side of the Strait, 6 or 7 in number, belong to the French and English families."

McKenzie, who visited the Sault between 1787 and 1793, says: "The village on the south shore, formerly a place of great resort for the inhabitants of Lake Superior and consequently of considerable trade is now dwindled to nothing." (*Voyages, p.* 38, *London Ed. of* 1812.)

In their memorial to Congress of December 1811, the principal citizens of Detroit (Judge Woodward and others,) do not even enumerate the Saut Ste. Marie as a settlement of Michigan. They say the whole population of the territory then amounted only to 4762 souls, of which four-fifths were French. (5 *Am. State Papers*, 781.) There was no means of reaching the Saut from the lower lakes except through immense pathless forests, or by means of bark canoes.

In 1788 the French revolution broke out, and France and England were at war almost uninterruptedly down to the peace of Paris of 1815.

In June 1812 war broke out between the United States and Great Britain, and continued till December 24, 1814. The first blow in this war was struck at Mackinac, which at once fell into the enemy's hands; and that point, as well as the Saut, were held by the British troops until they left in 1815. (*See said report* 42, *deposition of Samuel Lasley, p.* 9, *and of Biron, p.* 14.) In point of fact, the Saut had been under British authority from the time *Jemette* (killed at the massacre at Mackinac in 1763) took possession in 1762, down to 1815; and there is no historical evidence that the American jurisdiction was exercised there until the organization of the county of Chippeway, in 1827, (Territorial Code of 1827, 592,) the year after Mr. Sheriff's caveat was filed in the General Land Office, and the memorial of Mrs. Slacke was presented by Mr. Cambrelling. The British thus held it in their possession for more than sixty years—wrongfully, from 1783 to 1796, (if they left it then, which they did not,) and

wrongfully from 1814 onward. Did Congress, in passing the Act of 1860, intend to avail themselves of this wrongful possession of Great Britain?

In point of fact, the Northwestern Fur Company took possession of the old fort as early as 1787, (*McKenzie's Voyages, p. 3 to 40.*) They seem to have purchased from a *Mr. Barthe* in 1787, and next year sold the settlement to a *Mr. Simon McTavish* for 6000 pounds. (*Report* 42, *p.* 453.) McTavish was a member of the Northwestern Fur Company. (*Irving's Astoria.*)

In 1794, certain Indian chiefs assumed to sell a tract to J. B. Nolin, who on the 14th day of August, 1821, deeds it to Charles Oaks Ermatinger, (*Id.* 453, 454, 455); and this claim of Ermatinger, of eighty arpents in depth, was confirmed by the Commissioners in 1823.

Rep. 42 p. 20

The attention of our own government seems not to have been directed to this remote spot until 18[illegible], when the Secretary of War, Mr. Calhoun, in a letter to Gov. Cass, of April 5, instructed him to acquire a small piece of land from the Indians for military purposes. (*Id.* 16, 17).

Mr. Graham, the Commissioner of the Land Office, in his letter to the Commissioners, of October 9, 1823, (*Id.* 484,) instructs them that their jurisdiction depends upon occupancy, and seems ignorant of any legal grant.

At this time a small body of United States troops were there. (*Id.* 484).

As has been remarked, the claim of *Messrs. Warren* (*Id.* 368 &c.) was confirmed by the commissioners, founded upon old Cadotte's deed of 1796 to his two sons. Mr. Doty (*p.* 468) in presenting this claim remarks that Cadotte was upon it as early as 1760. It lies next below the old cantonment and was taken posession of by Col. Brady in 1822 for military purposes. (*See map of priv. land claims at the Saut of July* 6, 1823. *on file.*)

Note.—The petitioners have a right to resort to the testimony contained in this vol. 7 not only by the terms of the act of 1850 (9 L. & B. 469) but by that of 1824 adopted by the act of '60 and plainly in this respect applicable.

Such was the condition of the Saut. The whole region was an unreclaimed wilderness, and the place inaccessible save by means of canoes and wholly occupied by the North-western Fur Company and their agents. No one then but old Cadotte and his family had any knowledge of the grant to DeBonne and de Repentigny. They and their representatives have asserted their ownership on all proper occasions;—the Chevalier on leaving for France, in the form of a general power of attorney to his wife who remained behind, and her power to Quenel; his son Gaspard by his efforts to sell it through his agents from 1798 down to 1806 or '7; Pierre Amable by his acts of faith and homage Feb. 13, 1781; and Gaspard by his act of notoriety of 1800.

Gaspard died at Guadaloupe in 1808 in the midst of the wars of France with all Europe, leaving his sons Louis 24 years old, Theodore 22 years old and Camille 19 years old, none of them of age under the French law. Theodore died in 1811 and Camille and Louis in 1820, when this branch of the claim passed to Lizette, Josephine and Pauline, the eldest of whom was only 5 years old, all poor and residing in Guadaloupe. That they were poor, see Count de Bouille's dep. p. 147, fol. 547 &c.; do. of de Fayel, p. 139.

It would seem that these ladies did all they could do towards asserting their rights when they caused to be made out the *acte* of notoriety of March 13, 1841, at Guadaloupe. (*See for it printed case p. p. 35 &c. and for its authenticity the dep. of A. Thionville p. 95 and of Mr. Favarger,*

p. 26, *do. of Mr. Violet, p.* 142); although they had employed Mr. Violet and sent him to Washington to prosecute the claim in 1840 (p. 143).

But we have proved *actual possession* by the Chevalier and his agents for at least 12 years, i. e. from 1750 down to and including 1762 and as long as the French dominion lasted, and have made it too clear to be doubted that old Cadotte's posession was our own. The power of attorney to Quenel (p. 115) plainly by its terms, authorizing him to take from Cadotte not only one-third of the furs, but *all* other effects in his hands, implies this relation.

Down to 1796 the place was within the actual jurisdiction of the British authorities. *No political power whatever was exerted there by the United States till that year, when the British garrison was withdrawn* in pursuance of the treaty of '94. Thus from the conquest to '96, at least 34 years, Great Britain had the actual jurisdiction and possession, owing to the weakness of the Government of the United States. Of this there is no doubt. Nor is there any doubt that the Fur Company, a British corporation, held possession, unquestioned by our government, from that time down to 1823, when we sent a small garrison there. Until that date our government did not obtain a firm possession; and only two years afterward it was fully notified of our claim.

The United States received nothing from Great Britain but the cession of the sovereignty, by the treaties of 1782 and 1783. Under the laws of England the claim of an owner out of possession does not become absolutely barred until 60 years of *peaceable and uninterrupted possession.* Is it reasonable that the United States should claim by way of prescription the benefit not only of the 20 years which elapsed from the conquest, (which of right accrued to Virginia,) but all the rest of the time down to 1823, during which they had no possession and exercised no jurisdiction?

Great Britain ceded nothing which did not before belong to Virginia; and we deny the principle that the crown can prescribe against the subject. On the contrary, Virginia guaranteed their property to all the inhabitants, by her act of 1778, a guaranty the United States were bound to make good.

It cannot be pretended that the United States were in actual posession longer than from '96 to 1812 (16 years) and from 1815, the close of the war down to 1825 (10 years) when the King's grant was presented; making an actual occupancy of only 26 years. Instead of resorting to prescription against private persons the government of the United States has ever pursued an opposite policy and allowed the possession of the settler to ripen into a title. No, the reproach of seizing upon the property of individuals and claiming by prescription, does not rest upon our government.

But in this very act they limit the claimants to two years for the institution of their suit.—Was not this a yielding up of all objection on account of the lapse of time during which the alleged abandonment and prescription had run?

The objection taken in the
extinguished is without weigh
Indian occupancy.

Johnson vs. McIntosh, 8 *Wheat.* 543,
U. S. vs. Fernandez, 10 Pet. 303.

It was the duty of the Government to extinguish the Ind
Private persons could not treat with them. (*Ib.*)

But the French Government as above remarked took formal
of the country at the Saut, in 1671.—*See vol.* 9 *Doc. Rel. Colon*
N. Y., p. 803 *for St. Lusson's report of the ceremonies*, in whic
the Indian tribes had submitted to the control of the King's
customs.

Prescription under the Custom of Paris.

The seigneur cannot prescribe vs. his vassal. Pot. vol. 4 p. 584-5

But the answer insists that there has been not only such an
ment as would, upon general principles, bar our claim, but tha
French laws of Canada and particularly under Articles 113 and 11
Coutume de Paris our rights have become barred.

Let us examine this ground of objection.

The following points arise:—

1st. What are the provisions of the coutume relied upon?

2d. Supposing them to apply in the case, what is their effect
title?

3d. Had the periods of limitation prescribed by them elapse
the 4th of July, 1776?—the treaties of '82 and '83 recognizing th
date at which the sovereignty of the United States attached to t

4th. If they had not, can the time which had then elapsed be a
that which elapsed since the 4th of July '76 so as to make up th
period under the Canada laws and thus the two portions of time
be made to constitute the necessary period the lapse of which h
the *coutume* worked a loss of the title?—This last proposition is n
in *Pott's Lessee vs. Gilbert*, 3 Wash, C. C. R. 475, where it is h
the posession of different intruders in succession cannot be added
by the last intruder so as to make up the necessary period.

5th. In whose favor did this supposed loss of title accrue?
for the benefit of the government of France anterior to the con
of Great Britain between that time and the treaty of 1782; o
accrue in favor of the United States after the peace with Great Bri
Or, was it for the benefit of the *private individuals who actually*
the land?

6th. Can the articles of the *coutume* be pleaded in support o
session by Virginia or the United States subsequently to the Dec
of Independence?—If so, *they must since then have had the force*
either by the acts of Virginia or the acts of the Federal Governme
such act however has been or, it is confidently believed, can be pro

The 113th article of *Coutume* is as follows: "If any person
joyed a hereditament or rente, *by just title and in good faith*, by
and his predecessors, in whose right he is, and without molestation
years, those having right in the land, namely the owner, &c., bei
dents within the same jurisdiction; or for twenty years, those havi
right being out of such jurisdiction, and who shall be of age and
ledged, he acquires prescription of such hereditament or rente."

Under this article, the tests plainly are: 1st, a *just title*; 2d
faith; 3d, absence of molestation. What is meant by the expressi
just title" and "in good faith?"

The just title plainly means a formal paper title sufficient, if t
was in the grantor, to convey the land. *Francis Bourjon*,

on the Droit Commun of France, Vol. I., tit. 22, *ch.* 2, *pp.* 904, 905, *Paris ed.* 1747, says: "This prescription is to be favored, because it takes place in favor of him who has a title, and who has enjoyed in good faith. 'Tis these accompaniments (the title and good faith) that render it favored, a favor that cannot consequently influence the prescription of thirty years." And again, in a note, to Sec. 2, he says: "This prescription takes place in favor of a third person, who is a purchaser, (*acquereur*) notwithstanding the bad faith of his vendor (*auteur*), and the defectiveness of the vendor's title. 'Tis for this that this prescription is established; 'tis upon this principle that the 113th Art. of the *Coutume* was formed; and the title necessary for this prescription is the *colorable title*, although insufficient to transfer the true property, and which was such that the purchaser had just ground to think that it (the title) will be effectual. But the bad faith, which supervenes before this title is complete, stops its current."

Sec. 5. "Such are the consequences of this effect by means of this prescription; he who has title in good faith cannot be troubled further, either by the true owner of the inheritance, or the creditors to whom the inheritance has been mortgaged or encumbered. Such is the effect of this favorable prescription."

These citations are enough to show that the right secured by this prescription is confined to such persons as have procured from the party in possession a formal title, and have entered into posession under it in *good faith*, i. e. without notice of any fraud or violence committed by their grantors, and in the honest belief that their title papers are sufficient to transfer the estate. It is a *shorter* period than is allowed to the disseizor who enters as a tort-feasor, and is made so on account of the purchaser having proper *title papers* and having purchased in *good faith.*

It is not pretended that the king of France ever received any "title" from the persons in possession of the fief, or any part thereof; nor is it possible to produce any such proof—so that the 113th article of the *Coutume* has no application to the case whatever. And as to the "molestation" of the possession, if he ever had it, it is sufficient to refer to the capitulation and the treaties of cession, all which took place within the ten years.

The 118th article of the *Coutume* is as follows:

"If any person has enjoyed, used or possessed a hereditament or rente for thirty years continuously by himself or his predecessors justly, publicly and without molestation, though he has no title, he acquires prescription against persons having rights, who are of age and unprivileged."

For the sake of the argument let it be supposed that this article was in force in the locus; who would think of applying it in favor of the crown of France? The very language shows it to have applied to private persons and not to the king. Bourjon, commenting upon Sec. 3, of ch. 2, remarks that "the judge cannot *ex officio* apply the prescription, but it must be *alleged by the* party, because it is to him a personal right and cannot be supplied to him." Could the king of France be sued and put in such an attitude?

Speaking of Art. 118, he says: "The following is a general exception to this right: no one can prescribe against *his own title*, which is a continual interruption against prescription, and consequently interrupts its current, and this is common right;" and adds in a note, "This maxim applies to the tenant *fermier*, the *cestui que* use and the sequesterer, who cannot, by any lapse of time whatever, change the primitive cause of their possession," (*Tit.* 22 *ch.* 1, §1 *and* 2, *vol.* 1, *pp.* 902, 903,) a principle from which

was probably derived the maxim, *nullum tempus occurrit regi*, as the king was held to be the source of all the titles in the kingdom.

It is quite obvious that neither of these Articles can be made to apply in favor of the crown of France.

The answer alleges that the United States have *possessed* the lands under both these Articles; under a *just title* and in good faith for upwards of twenty years, and "enjoyed, used and possesssed them for thirty years; and that the claimants are now, under the *coutume*, barred by these prescriptions. But it does not state at *what time* or how this prescription commenced. It is evident the pleader meant,

1st—To embrace both the crowns of France and England among the "persons" referred to in each Article and also the United States as the *successor* to the rights of each; and 2d—to incorporate into the grant itself and as a part of its conditions those two Articles.

It is argued by the counsel for the United States that the right of the grantees ceased by what is called their abandonment in the spring of 1755; or at least by their failure to occupy and hold hearth and home (*feu et lieu*) after that time, in performance of the conditions of the grant; and that therefore by the cession of Canada to Great Britain the King became vested *ipso facto* with the title, and that the United States took it by the treaty of 1783.

The reversion to the French King for non-occupancy is a pure assumption, unsupported by any evidence, against justice and against the principles of the feudal and Canadian prescription.

Both the grantees were French officers in the military service of the King; both were in the battle of Sillery in the Spring of 1760, where De Bonne fell.

The war had been actually raging since 1748, the date of Gov. Gallissoniere's letter to de R. to make war upon New England, (*printed case* 491. See 4 Bancroft's Hist. U. S. 93 etc. Pothier in his treatise on *Prescription*, Part 1, Ch. 1 Art. 3, says, "Hence it also follows that the time of prescription does not run against the owner *while he is absent on the service of the State*, if there be no one charged with his affairs, and when, even, it is not on the service of the State that he has been absent, but for some other just cause which may have obliged him to leave without having leisure to charge any one with his affairs; or if the person he left in charge on leaving has ceased by death or otherwise to take care of them, the time of prescription does not run against him. It is so generally with all other just causes of hindrance which prevent the owner from instituting his action; the time of prescription does not run while the hindrance subsists." Certainly, no Court of justice can hold that this absence of the grantees in the service of the King himself and for the very purpose of maintaining his sovereignty, can operate as a breach of the condition and forfeiture of the title. Such a proposition would be shocking to all sense of justice. But on this strange hypothesis, let us see what would be the attitude of the United States?

It makes the French King a usurper of the property of his subjects de B. and de R. while they were in his military service, fighting his battles, property he had granted them but five years before!—for the proof is positive that the Chevalier was in actual personal possession in the summer of 1755. At the end of 10 years (1765) the cession had been made to Great Britain by the treaty of the 10th of February, 1763, which in law took effect by relation from the time of the capitulation, September 8, 1760. The possession then ceased by law; the prescription was interrupted and ceased also as against the grantees. In 1764 or '5, the Cheva-

lier went to France; but by the 37th Article of the capitulation it was provided that "all persons whatever shall preserve the entire *property* and possession of their goods noble and ignoble, movable and immovable; * * * they shall *not be touched* nor the least damage done to them under any pretense whatever."

The right to emigrate within eighteen months, it may here be observed, was but a personal privilege, to enable the inhabitants to avoid becoming British subjects, as they would have done by remaining in Canada beyond that period. *Halleck on Inter. Law p.* 817, §§ 6, 7; *Fleming, vs. Page*, 9 *How.* 608. The honor and faith of the British crown were bound by this capitulation. (*See this brief, alienage, p.* 12). How absurd, then, to make him guilty of usurping this private property and holding it as a trespasser.

There is no proof whatever that he did so; and if his officers took possession of the military post, we have the capitulation as his assurance that he did not *intend* to disturb the proprietary rights of the grantees. In fact, the capitulation directly *disproves* the allegation as to the king of Great Britain; to which should be added the fact of fealty and homage by DeBonne in 1781.

The King of Great Britain cannot therefore be charged with this breach of faith, nor be treated as a claimant and holder under the thirty years clause of the *Coutume*, to say nothing of DeBonne's *minority.*

But even if there were proof that he intended to become a disseizor, and to avail himself of the time that had run since 1755, he acquired no title under that clause, for the thirty years did not expire until 1785, nine years after the declaration of independence. The *continuity* of the possession was thus interrupted.

DeBonne's Minority.

The prescription could not for another reason run against young De Bonne. He was born November 25, 1758, and was a minor until January 1, 1783. (*See Provincial Act of* 1780, *in Public Acts, vol. O, p.* 64.) Bourjon, (Tit. 22, ch. 1, §2, ¶12,) says, "The following is another exception (to art. 118), but limited. But the prescription is in suspense against *minors* during the whole time of their minority. Their impotence to act and the singular protection they need exempt them from it." (See also Pothier on Prescrip. Pt. 1, ch. 1, art. 1, §8, pp. 146–7.) By this rule the prescription could, under no circumstances, have begun to run until his majority, January 1, 1783, and the thirty years would have reached to 1813, during the war of 1812. But it is respectfully submitted that the United States cannot admit the possession of land within their territory to be in a foreign power. They could not recognize such property in that power. Had the thirty years run out, could the king of Great Britain claim the property in an American Court?

Both Virginia and the United States took, not as private persons, but as sovereign powers, and never claimed anything that did not pertain to them as such, and therefore never divested or interfered with private rights.

Again: it is absurd to contend that these articles of the *Coutume* are *part of the terms of the grant itself.*

Prescription is a positive law of the place, for the regulation of private

rights. *Kluber*, Sec 6, says it is founded in positive private law *droit positif privè*), and cannot have place between independ unless authorized by treaties." Again, (*Co. Litt.* 113) "*Pres titulus ex usu et tempore substantiam capiens ab auctorita* Angell on Lim. p. 2. It is in its nature but a law applicable where it operates, but, like other laws, can have no extra territo tion. Story Confl. of L, §581.

It is but a rule of property within the territorial limits, and i a part of the grant than is the law of inheritance, distribution or l

Even the language of the brevet of ratification excludes the these prescriptions form part of the terms of the grant. It g land in perpetuity, on condition of performing faith and homag castle of St. Louis, and *other duties* (*redevances*) *required by the Paris followed in that country.*" Those other duties had no r prescription, and it is useless to attempt to force prescription i them.

It is to be observed that the answer sets up no claim that an person entered upon the lands and acquired a prescriptive title, b and insists that the United States took possession and held it f sixty years" as abandoned property. So that no question can ari the present state of the pleadings, based upon a want of proper e. of persons claiming adversely. The only real question is, Are ted States in law or equity the owners of the land?

To restate our views under this head:

The following passages in Pothier's Treatise on Possession scription should be consulted: (Ed. of 1772 Paris.) As to jus sion, ch. 1 Art. 2, §7 p. 10. *Bad faith* is the knowledge you pos the land is not yours,—*scientia rei alienæ*, ch. 1, Art. 3, sec. 7 taking possession by the claimant, he must have the *will* to take i to the fact, ch. 4, §39, p. 34; sec. 1, p. 35; sec. 2, p. 36–7; sec. ch. 4, sec. 2, §55, p. 45. As to a possession held by an agent or se *is our possession*, ch. 4, sec. 2, §63, p. 52. This applies to the ch partners, &c., for *nemo potest ipse sibi causam mutare possessio* Pt. 2, Art. 1, sec. 3, p. 306. As to losing possession, it must be *lost*, ch. 5, §64, p. 54; unless by abandonment pure and simple, §6 and the abandonment must be voluntary, ch. 5, Art. 1, §2, p. 60–6 by prescription is tantamount to a transfer of the property by th Pt. 1, ch. 1, Art. 1, §8, p. 146–7; and hence *a minor* cannot aba be prescribed against. And see Pt. 1, ch. 1, Art. 2, p. 155–56; as to *minors*, ibid. p. 147.

As to possession in *good faith* Pt. 1, ch. 2, Art. 1, pp. 164 to must be *public*, "so that all who desired to see and know it mig done so," Pt. 1, ch. 2, Art. 2, p. 174. And *the title must be a jus* e. *a contrat de vente*, or some other acte of a nature to tranfer perty, ch. 3, p. 193–4–5, 219 (Sec. 1); ch. 3, Art. 2, sec. 3, p. 230 p. 236–7–8. Prescriptive title of *heirs* and that of mere *successor* possession; the latter must possess in good faith, ch. 4, Art. 2, p. 2 2, p. 255.

Essentials by Law for Prescription to acquire Immovable Property the Coutume, to be Alleged and Pleaded and also Proved.

By Art. 113 a just title is required—*i. e.*, title according to la Art. 118 no title is needed.

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A just title must be a notarial acte—"an authenticated contract executed in the form and manner prescribed by law for contracts between persons capable of contracting"—in fine, a notarial acte. But this title is insufficient without good faith, which is required by the 113th Art., while Art. 118 does not require it. This qualification of good faith is necessary to be possessed at the initiation of the prescription—*i. e.*, at the time of making the acquisition; "*de sorte que quand on acquiert à non domino, il faut pour user de la prescription de* 10 *ou* 20 *ans, avoir cru que le vendeur ou donateur etait proprietaire.*" "*En effet, la connaissance qu' acquereur ou donateur peut facilement avoir du vendeur ou donateur oblige de lui mettre entre les mains les titres et contrats en vertu des quels il jouit, leve toute la difficulté et ne doit laisser aucun doute sur le fait de la proprieté.*" These essentials then of just title and good faith are peculiar to the 113th Art., but these alone are insufficient without a third legal qualification which is common to both articles—viz., actual possession. Under the 113th this must be continuous for ten or twenty years, as the case may be; under the 118th it must so continue for thirty years from the entry.

As to possession.—"*Pour acquérir la possession d'une chose il faut la volontè de la posseder, jointe à la prehension de cette chose.*" (Pothier, Prescrip. 34). 1st. It must be actual and *animo domini.* 2d. Freely, openly and without interruption. 3d. Continuous during the period limited; and 4th. Must extend over the land (immovable) subject to the prescription.

As prescription becomes in law a title the prescriber is required to set out in his pleading to the owner's demand for the recovery of his property, these essentials of either article according to the mode of prescription under which he claims right. "*Le juge ne peut suppleer la prescription, si elle n'est apposèe.*" The necessity of these allegations is apparent because they are matters of fact and may be denied and controverted.

The plea of prescription is therefore what is termed in French law an "*exception peremptoire au fond en droit,*" and must be pleaded ("specially") and be proved by evidence.

But there are exceptions:

1. It cannot be pleaded under either article as effective during the legal minority of the owner, nor commence to run until after his majority.

2. Under the 113th Art. it is held for law that this prescription can not be set up against a person absent upon the king's service, nor against a soldier whilst serving in war for his prince.

It is a real law or right, municipal in its character and nature and only attaching to the immovable in contest, *in situ.* The immovable here is in the United States, where it is subject to its own municipal law and cannot be subject to that of a foreign State, which cannot extend beyond its own territory.

If the King of England prescribed, by what article? the 113th or the 118th? The respondents' answer pleads both. They allege a possession under a *just title* without specifying it, and *de bonne foi* which depends upon the possessor; and under both periods of ten and twenty years. It is sufficient to observe that the *just title* is described or set forth in such a way as not to give the petitioners the least notice as to what it is or was; nor is any title whatever in either the King of France or of England proved to be or ever to have been in existence. That ingredient (*just title*) of the short prescription being unfounded, the next (*good faith*) becomes unavailing because it applies to the title only. The mere lapse of time of ten or twenty years alone is immaterial under this article.

But assuming what was not the fact that the King of Englar how long did he hold possession? At most only twenty-two ye ing from the actual conquest in 1760 by General Wolfe, to 178 of the preliminary treaty of peace; and only sixteen years count should do, to the declaration of independence. It is a principl dian law of prescription, "*que la possession s' interrompt lorsqu avait commencè de prescrire, cesse de posseder*,"—"that the po broken off when he who has commenced to prescribe ceases to

The possession if it existed at all ceased by the treaty of 1 as the King of England was concerned, and the period requi 118th Art. had no effect whatever from 1760 or even from 1755 Chevalier was on the tract.

But the actual reception of fealty and homage from young repelled the king's claim up to 1781 for the whole. The mino Bonne forbade it up to Jan. 1, 1783; and the treaty of 1782 w interruption which set aside the 118th Art. altogether.

If it be intended to tack on to the alleged possession of t States the alleged prescription of the Crown of Great Britain, t be, because the treaty of peace—nay, the declaration of indep had the effect of changing the sovereignty, but did not inte private rights of property; and from the moment that treaty tion came into effect, whatever prescriptive rights could by have existed were *interrupted and ceased* and were no longer molestation" as termed in the 118th Art., because the possessio

These articles are pleaded in the answer as bars under the la United States; and whether as matter of law or mere pleadin gation respecting the prescription under them is singularly ridic indicative of utter ignorance of law in that respect.

Finally, the Crown could not prescribe, could not annul its by alleging its own possession. It might have adopted proce obtain a forfeiture of the grant for breach of its conditions i been committed, and to effect a re-union if it could have b whereby as being crown property the private title and right w been extinguished; though it could not, *mero motu*, annul the

See Deps of Hodgesmith fol 963—4; Do. of Monk fol 1001-2

It is impossible that the possession of Great Britain, what have been its character, can be recognized as rightful for any pe recent than the treaty of Nov. 30, 1782, acknowledging the inde of the United States and declaring (Art. 8) that hostilities shoul diately" cease; which is nineteen years nine months and tw from the treaty of Paris; during six years five months and t days Virginia was in possession, according to the principles laid *McIlvaine vs. Coxe's Lessee*, 4 Cr., and in *Wheat. Inter. Law*, p §6.

Now, there is no proof whatever that the French Governm had any but a mere military possession of the post, which ceas peace of 1763. Gen. Bradstreet's in 1764 was purely military. never had the *actual* possession for any purpose; nor had th States actual possession of that part of the country until the Ca of 1820, which extinguished the Indian title only to a very sma the tract.

There is during the period of fifty-six years, from the time th lier quit the possession in 1764 down to 1820 a total absence of claim of ownership on the part of France, Great Britain, Virgi United States, except the mere occupation of the post for mil

poses. And still the Court is asked to treat all these governments as *disseizors* as against the claimants. *Angell* (*Lim.* 410) defines disseizin and adverse possession to be "an actual visible and exclusive appropriation of land, *commenced and continued under a claim of right*, either under an openly avowed claim or under a constructive claim arising from the acts and circumstances of the appropriation, to hold the land against him who was seized."

This Court, it is submitted, cannot assume to recognize the mere *sovereignty* of these Governments over the tract as a *continued adverse possession and ouster* of the private owners, without any proof, direct or indirect, of an intention on their part to hold or claim it as against the grantees. And yet this is what the Court is asked to do, in the teeth of the capitulation, the fact that the grant was duly recorded at Quebec in 1766, of the acts of fealty by DeBonne in '81, the Virginia statute of '78, the treaties of '62 and '63, of '82, '83 and '94 with G. B. and those of France of '78 and 1800, as well as the ordinance of 1787.

The claim of G. B. could not possibly have had an earlier beginning than the date of the treaty of Paris, February 10, 1763, and ceased on the 4th of July, 1776, when Virginia took the pretended inchoate right and held it until March 1, 1784, i. e., together twenty one years and six days, when the right passed to the United States, according to the theory of respondent's counsel.

Neither the act of 32 Hen., 8, limiting the writ of right to sixty years, nor the act of James I, relating to writs of formedon and entry was in force in favor of the United States. Both these acts merely regulate the remedy and of course ceased to operate from the 4th of July, 1776, even if they could have been appealed to by the British Government before that time, which we deny. And there was no act of limitations in force over the locus until the act of the territory of Michigan of March, 1820, which applies only to private parties.

The act of Henry VIII and James I, both contain saving clauses in favor of infants. The father of P. A. DeBonne was killed in 1760, while De Couagne and Corron, the Chevalier's partners, were in actual possession of the place. So that there was never a moment when either the feudal or English law would run against him.

Until the Cass treaty of 1820 the Government of the United States supposed the whole region was subject to the Indian title. (See Mr. Graham's letter, Report 42, page 6). The Indian title was fully extinguished by Mr. Schoolcraft's treaty of May 27, 1836. (7 L. & B. 4 1).

The Government of the United States has held the sovereignty, but contrary to its accustomed policy it has never until the act of 1860 afforded the claimants an opportunity to assert their rights except by petition to Congress. Simple justice would therefore seem to require that if the true construction of the act should not, as we contend it should, confine the question of title to the time of its emanation, the case should be treated as if the act had been passed at the time when the claim of G. B. was finally renounced, or at farthest when the country was ceded by Virginia; for as the Government has afforded us *no remedy* by which we could assert our right, it seems rank injustice to tell us now that its delay, by which it has been made impossible for us to make good our claim, *shall operate to our injury and their own advantage.*

The Conditions of the Grant.

There was in the concession only one condition precedent, viz the obtaining of the brevet of ratification from the King within one year. All the rest were conditions subsequent:

1st. To do faith and homage at the castle of St. Louis, as well as the other duties (*redevances*) required by the *coutume de Paris* followed in that country.

2d. To preserve the oak timber for the King's ships.

3d. To disclose the mines if any.

4th. To put the tract *en valeur* (*i. e.*, to improve it) and to cause it to be held and possessed by their tenants (*et d'y faire tenir feu et lieu par leur tenanciers*).

As to the first, the United States had not the least interest in it, and are precluded from insisting upon it for the land fell within the Virginia charter and Virginia demanded nothing of the kind. Her grants were all made in free and common socage.

3 *Kent. Com.* 511 n. a.
1 *Greenl. Cruise*, 24.

That antiquated ceremony was a mere acknowledgment by the tenant of his suzerain or superior lord. Yet P. A. DeBonne rendered faith and homage at the castle February 13, 1781, which was "suspended until the aforesaid party shall have presented to us (the Governor) the ratification of his said seigniory, or more fully informed." Although the brevet had been recorded at Quebec since August 11, 1766, yet young DeBonne in 1782 procured from the proper department at Paris another copy. (*See Paris doc.* 22, *printed case* 122).

As to the second, it was a condition in which the crown alone was interested, and there is no proof of a breach of it. And the same may be said of the third condition.

As to the fourth, we have proved distinctly the possession and improvement; and we have as we think proved satisfactorily that old Cadotte was really our agent or tenant. If his heirs or grantees were in Court insisting upon their individual claims as against us they could not be allowed to change by mere intention and without notice to us the character of the original possession; and we should be able to insist that that possession was ours; for where the possession is jointly held by the owner and the tenant the *statute of limitation* does not begin to run until the tenant's adverse possession has become notorious, precluding all doubt of the character of the holding and all want of knowledge in the owner.

Zeller vs. *Eckert*, 4 How. 295 etc.

Biron swears that his father-in-law Michel Cadotte a nephew of old Cadotte told him that old Cadotte admitted to him (Michel) that the Saut was within a seigniory and belonged to de Repentigny and De Bonne—"that it included the old post and a great distance below and above the same, that he," Cadotte, "had command of the post, of the men, the canoes, the voyageurs, goods, portage, and Indians connected therewith"—(*fols.* 193-'4-'5-'6); and that old Cadotte's *son* Michel, (one of the grantees in his deed of 1796), told him his father came from Montreal as a voyageur when the post was in possession of the French and that his wife (*i. e.*, Michel's mother) was an *Indian woman*, called *Astasia*, (fol. 193).

The declaration of Cadotte while in possession, for he was in possession till his death in 1803, go to qualify his claim and show that he was not the owner.

In point of fact the seigniory has never been *vacant*. The original posession under the grant was ours, and the government were bound to take notice of the fact that the grant was made and bound by the legal presumption that the possession was under and by virtue of it. They could not presume that the white settlers there were mere *squatters* claiming by tortious entry. Henry the traveler and fur trader was at the Saut during the summer of 1762, the winters of '66-7, of '68-9 and of '69-70, and was a partner of Cadotte in '65 (p. 192-3). He was acquainted with the state of things there for 8 years and undoubtedly visited it on his return from his most interresting trip down the Saskashawan in 1776; making a period of 14 years. McKenzie was there in 1788, and says he found the place "full of drunken Indians and ten or twelve Canadians who have been in the Indian country from an early period of life and intermarried with the natives who have brought them families. The inducement to settle here was the great quantity of white fish." p. 86-7. He tells us the North-western Fur Company had an agent there.

We have a right to claim not only that the grantees actually took possession and made improvements but that all persons subsequently in possession held under them; and that therefore not only the condition of taking posession under the grant but also that of continuing it, has been performed. Thus the title becomes obsolute by the performance of the condition, (2 Cruise's Dig. 24.)

In the case of the *United States vs. Arredondo*, 6 Pet. 693, where the grant was a perfect grant conveying the fee of the land, the condition was that the grantee should establish on the land 200 Spanish families with all the requisites &c., and should carry this into effect in three years, this court held the condition void by the act of the grantor, Spain, by whom Florida was ceded to the United States *within the two years*. The Florida Act (8 L. & B. 258) provided that the lands should be confirmed to persons in possession of them. And the court say—"The law deems every man to be in legal seizin and possession of land to which he has a perfect and complete title. The seizin and possession is co-extensive with his right and continues until he is ousted thereof by an actual adverse possession. This is a settled principle of the common law recognized and adopted by this court in *Green vs. Litter*, 8 Cr. 229: See *Angell on Lim.* 400; *Prop. Soc'y vs. Paulet*, 4 *Pet.* 480, 504, 506; *Clark vs. Courtney*, 5 *Pet.* 354-'5; and is not now to be questioned."—The court acted under the Florida act of 1828 (8 L. and B. 284) which adopted the principles of the Missouri act of May 26, '24.

The Fremont grant was in fee and subject to a condition subsequent never performed, the performance being excused on account of the disturbed state of the country, (17 How. 545.)

If, in our case, the grantees failed in *continuing* in possession they failed because France herself failed to hold possession of the country.—Such failures should be excused:—

United States vs. Arredondo, 6 Pet. 745.
Gunn vs. United States, 18 How. 257.

By the laws of nations the conqueror acquires only the public and political rights belonging to the sovereign whom he opposes. The rights of private property do not pass to him by the conquest and he is bound to respect and protect them. *Vattel* 574, 575, *&c.—See also McKee's*

report in the Ho. Reps, 1814, 17 *Am. State Papers*, 893; — *Mitchell vs. United States*, 9 *Pet.* 734; *Johnson vs. McIntosh*, 8 *Wheat.* 543; *Strother vs. Lucas*, 12 *Pet.* 438.

But the United States set up other grounds of defence and insist that by the laws of Canada in force after the grant emanated there was, by the fault of the grantees, a

Re-union to the King's Domain.

The answer alleges two grounds for this claim :—

1st. The royal arret of March 15, 1732 relating to the sale of wooded or timbered lands : and

2d. The same arret and also the arret of Marly (No. 2) of the 6th of July 1711 requiring the seigniors to reside on their seigniories (*y tenir feu et lieu*) and improve them (*les metre en valeur*) ;

And the counsel for the United States contended that the sale by DeBonne to Caldwell, (being as they seem to suppose of timbered land) was void and had the effect to reunite the seigniory to the public domain ; —and that the circumstance that the grantees did not actually *reside continuously upon the tract and cultivate it* had the effect in law to work a re-union, *ipso facto*, of the whole tract to the public domain and a complete forfeiture of all claim of the grantees ; *without any judicial trial, judgment or decree.*

If this defense is intended to apply to the locus at any time subsequent to the 4th of July '76 or at farthest the treaty of 1782, it must rest upon the assumption that those arrets formed a part of the grant itself and were not mere local enactments which ceased with the change of sovereignty. We deem it unnecessary to discuss the proposition that they were part of the contract or grant. They were no part of the *coutume* of Paris but only remedial laws made by the King of France to prevent certain acts inconsistent with his policy. A perusal of them in vol. 1 of the "*Edits et Ordinances*" will show this.

The arret of 1732, after reciting the substance of the two arrets of Marly, of July 19, 1711, and complaining that some of the seigniors are in the habit of selling off their woodlands instead of conceding them upon a rent, declares :—"*Sa majeste ètant en son conseil, a ordonnè at ordonne que dans deux ans, à compter du present arret, tous les poprietaires des terres en seigneurie non encore defrichèes, seront tenus de les mettre en valeur at d'y etablir des habitans, sènon, et le dit temps passè, les dites terres demeureront reunies au domaine de sa majeste en vertu du present erret, et sans qu' il en soit besoin d'autre.*

"*Fait sa majésté très expresses inhibitions et defenses à tous seigneurs et autres proprietaires, de vendre aucunes terres en bois debout, à peine de nullite des contrats de vente, et de restitution du prix des dites terres vendues, lesquelles seront pareillment reunies de plein droit au domaine de sa majestè, et seront, au surplus les dits deux arrets du six juillet, mil sept cent onze, executes selon leur forme et teneur, et le present sera registrè au greffe du conseil superieur de Quebec, lu et publiè partout ou besoin sera.*" *See p.* 531 *for the arret of* 1732, *and pp.* 324–5–6 *for the arrets of July* 6, 1711."

The point sought to be made out by these arrets is that there was an actual reunion of the seigniory to the king's domain by the sale of woodlands (i. e. DeBonne to Caldwell in '96) and by the alleged neglect of the

grantees "*de mettre en culture*," the tract *and* "*d'y avoir feu et lieu*," without trial of the fact and without judicial sentence; *there being no proof in this case of any such trial or sentence;* in short, a reunion *de facto* by the mere operation of these arrets.

The Court will perceive by reference to the third paragraph of the arret of 1732 that the king also ordered that the two arrets of 1711 "should be executed according to their form and tenor." Now the first of them (p. 324) requiring seigniories *already granted* to be improved and settled, provides expressly that in case of default beyond one year they shall be reunited to the king's domain "*upon the application* of the procureur general of Quebec and according to the ordinances passed upon the subject by the Governor and Lieutenant General of his majesty and the intendant," and at the foot of the arret is a special direction by the king to the *huissier* to serve all summonses, &c., for its execution, as he should be required.

The second of them (p. 326) requiring all habitans to reside on lands that had been *already* conceded to them, within one year, provides that the lands shall, in default, escheat (dechu), and be reunited to the domains of the seigniors, "according to the ordonnances which shall be rendered by the Sieur Begnon, intendant in New France," and a like direction is addressed to the huissier.

This is perhaps enough to show that under the French Colonial Law there could be no union or forfeiture to the crown without trial and judgment. But as if to make it still more certain, the king in his "*declaration*" of 1743 (pp. 572–3, §5,) expressly says: "*Declarons nulles et de nul effet toutes concessions qui ne seront pas faites conjointmeut par le gouverneur et l' intendant ou par les officiers que doivent les representer respectivement; comme aussi toutes reunions qui ne seront pas prononcès, et tous judgmens qui ne seront pas rendus en commun pareux ou leur representans.*"

This is part of the "precise law," one of the "fixed and invariable rules," as the king denominates them in the arret itself, "to remove the state of uncertainty in matters so important for the security and tranquillity of families," then adopted by him, and by its terms made applicable to "*all the French colonies.*"

Judge Badgley of Montreal, at present perhaps the most learned jurist in the province, in his answers to the general direct interrogatory, tells us that under the arrets of 1711, the proceedings were strictly judicial, and that only three judgments were rendered under them (*printed case* 196–7); and in his answer to the respondents' seventh cross interrogatory (pp. 213, 214,) says, that *ipso facto* reunions were impossible under the declaration of 1743. He properly translates the clause cited from the arret of 1732, "that all owners of unimproved seigniories shall improve them and place settlers upon them, otherwise the seigniories shall be united in virtue of this statute without recourse to any other statute therefor;" which is the true rendering, as the word *arret* is used throughout this and the other royal orders in the sense *of statute* or law. And this is in accordance with the translation of the same clause by Ch. Justice Lafontaine, whose expression is, "The said lands shall be reunited to his majesty's domain by virtue of this *arret*, without a necessity for any other." (*Seniorial Questions, vol. A, p.* 126a.)

And yet Mr. Sanborn, the respondent's professional witness in Canada, in his effort to uphold his theory that no trial and judgment were necessary, furnishes what he calls a translation of the same clause from the arret of 1732, as follows (*printed case p.* 318): "in default whereof and after the expiration of such delay, the said seigniories shall be reunited to the

domain of his majesty, by virtue of the present *decree and without any other proceedings being required*, his majesty expressly prohibiting all seigniors or other proprietors from selling any woodland on pain of nullity of the deed of sale and of restitution of price of land sold as aforesaid, which lands shall in the same manner be reunited *by force of law* to the domain of his majesty."

Here is another mistranslation. "*De plein droit*" does not mean "*by force of law*," but "in full right." (*See Judge B's ans. to 7th cross interrogatory, p.* 213, *fol.* 769; *Judge Smith, p.* 262, *fol.* 943–963.

But the last clause of the arret of 1732, above cited, could have no effect upon the sale of an undivided moiety; its object being to prevent mere speculation in *standing timber*, leaving the lands uncultivated and unsettled. (*See Judge B's ans. to 7th cross interrogatory, fols.* 767–8, *p.* 212.)

Besides, at the time of the sale by DeBonne to Caldwell, 1796, there can be no pretense that this prohibition applied to the locus.

Mr. Sanborn remarks, (p. 304, fol. 1071) that the king "established this tribunal" (the Governor and Intendant) to do what *often* prior thereto he had done "*ex mero motu*," i. e. to reunite and resume lands once granted. Now, in point of fact, he is mistaken in this also.

Before the arrets of 1711 there were only four royal "*arrets de retrenchment*," synonymous with reunion, viz.:

1. Arret 21st March, 1663, obliging all grantees of land to clear them in six months on pain of reunion, *to be carried out by the sovereign council*, consisting of the governor, the bishop, the intendant, and two others, (1 *Edits et Ord.* 33.). This arret was registered Sept. 18, 1663, at Quebec, and its registration was to affect prospective grants, "not to interfere with the people settled in the country." (*Seign. Qu., vol. A., pp.* 52*a and* 53*a*, *Lafontaine.*) And before any proceedings could be had under it, the counsel ordered that the arret be communicated to the syndic of the inhabitants by the Attorney General, then to be ordered as may be reasonable. (*Id.* 53*a.*)

2. Arret de retrenchment of 4 June, 1672, giving authority to the intendant to retrench one half of the grants not cleared in four years. (1 *Edits et Ord.* 70.)

3. Arret de retrenchment, of same date, manifestly in place of the last named. (*Seign. Qu., vol. A.*, 83*a.*)

4. Arret de retrenchment, 9 May, 1679, registered October, 1679, (1 *Edits et Ord.*, 233), refers to the declaration ordered to be made by No. 2, and orders a retrenchment not of one-half but of one-quarter, and that after 1780 one-twentieth shall annually be retrenched from the uncleared lands, (1 *Edits et Ord.*, *Seign. Q., vol A*, 95*a*–97*a*; *B*, 44*h*).

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Judge Meredith after reviewing these four arrets de retrenchment says, (*Seign. Qu. vol. B*, 38*h*): "I know of no instance in which a seignior was deprived without compensation of all his uncleared land by virtue of the first *arret de retrenchment*, or of the one-half of his uncleared land by virtue of the second and third of those arrets, or of the one-fourth or of the one-twentieth by virtue of the fourth and last of those arrets." Again, "it is quite certain that those arrets of themselves did not operate a defeasance of the grants. The arret gave the parties against whom it was directed six months from the time it was registered to clear their lands, and it was afterwards modified by the other arrets, which required that a certain portion only of the uncleared land should be resumed. In order to enforce these arrets some proceedings would have been necessary to determine what portion of the feif was resumed by the crown, and what portion

was left to the vassal; *and of any such proceeding we can find no trace*," *et seq.*

But whatever may have been the fact as to a reünion *mero motu*, the Canadian Judges are unanimously of opinion that the arrets of 1711, 1732 and 1743 were in force at the cession of Canada by France and generally observed up to that time. (Seign. Qu. vol. A, proceedings before the twelve Judges, pages 61a and 62a). That they were in force up to 1854, (9 to 3), (Id. page 65a,) and that there was a competent tribunal to exercise the power and jurisdiction conferred on the Governor and Intendant by the arret of 6th of July, 1711, they stood *six to six*, (Id. pages 65a and 66a).

It would seem to follow from this that the King *never reunited or retrenched after* the arret of 1711, and never violated his *own prohibition* against reunions except by a judgment pronounced by the Governor and Intendant, as provided in section five of the declaration of 1743. (1 *Edits et Ord.* 573). Chief J. Lefontaine remarks, *Seign Qu. vol. A*, 393a, that he has seen three ordinances of reünion rendered after the arret of July 6th, 1711. For the last he names, *see* 2 *Edits et ord., page* 55; after regular proceedings had, parties all summoned on plaint of the Attorney General, appearing and answering, and a regular judgment. If in all these cases (twenty in number) the arrets operated a reünion of themselves, *ex mero motu*, why were not the forfeited lands reünited without the formality of a judgment? And how can the professional witness, Sanborn, in defiance of the express language of the declaration of 1743, seek to establish it as a *fact* that this seigniory was reünited without trial and judgment?

The ordinances of this tribunal were *judicial* and the matter between the king and his grantees, suits. (*Seign. Qu., vol. B*, 24 *d and* 25 *d—Judge Caron; Do., vol. B, pp.* 71 *f*, 72 *f—Judge Smith;* Do., vol. A, pp. 376–7–8–9–80–81–82–83–88 and '95 a, and note on p. 385 a—Judge Lafontaine; all which references should be carefully perused). Chief Justice Lafontaine, p. 389 a, says: "I have already stated that under the operation of the different arrets of retrenchment it seemed to me necessary, to proceed regularly, previously to pronounce the re-union to the crown domain, even when the word *re-union* was not written in the arret. The king's declaration of the 17th July, 1743, (*Edits et Ord.*, v. 1, p. 531), 'concerning the concessions in colonies,' *proves it in an incontestable manner.*"

(See Judge Smith to same effect, Seign. Qu., vol. B, pp. 61 f, 62 f).

These citations would seem sufficient to settle the question raised by Mr. Sanborn, and to show that there has been no such thing as a re-union *de facto* [redacted] to the king's domain.

The Nature of the Interest Conveyed by a Seigniorial Grant.

It has been argued that *no title* passed by such a grant, but that the title itself remained in the king; and that the *censetaire* (tenant under the seignior) held the *dominium utile.*

This ground of objection is wholly untenable. By the *coutume de Paris*, (*Pothier on Fiefs, Ch. VI., Pt. I., p.* 374, *Orleans ed.*, 1776), they were heritable and disposable. Pothier, *ubi supra*, says—"Afterwards fiefs became patrimonial and disposable, but subject to the profit which is

due whenever the fief is sold, which takes the place of the present which used to be made to the seignior to obtain his consent. This profit is called in the custom of Paris and of Orleans the *quint* profit, because by these customs it consists of the *fifth* part of the price for which the fief sold. What gives rise to the *quint* is the sale of the fief." Under the Seigniorial Act of Lower Canada of 1854, one of the propositions submitted to the twelve Judges on behalf of the Crown was that under the laws of Canada the seigniors had a *right of property limited and restricted by the* obligation of conceding them at an annual rent and by their inability to alienate them otherwise.

Eleven out of the twelve answer: "According to the laws in force in Canada before the cession of the country by the Crown of France, the grantees of lands in *fief* and seigniory by the Crown of France had the full and entire property in them (*dominium plenum*), but they could only alienate them in the manner above mentioned." (*Opinions of the twelve Judges, p.* 62 *a*).

The present grant is to the two grantees their heirs and assigns ("*ayant cause*") in perpetuity; and he expressly releases and *discharges them from all dues whatever.*

As already stated the United States commissioners under the Act of 1804 decided that such grants are to be treated as a "*complete transfer* of the government right." And this was good law; for it is impossible for the United States as the successor of Virginia to claim any forfeiture growing out of the feudal law or any law of Canada, subsequently to the 4th of July, '76, as the Act of Ch. II. was in force in Virginia, which, among other things, declared that all sorts of tenures held of the king and others be turned into *free and common socage*, except frankalmoine, copyhold and the honorary services of grand sergeanty.

Surely, no right or interest that had not actually passed to the Crown by that time, could be claimed by Virginia afterwards, growing out of the feudal law or the local laws of Canada inconsistent with the laws of Virginia.

The Boundaries of the Tract.

It is objected that the grant is void for uncertainty in the boundaries.

The Franquet map is decisive of the limits. It is dated in 1752, and was made by a proper Government officer, and is therefore an Act of the French Government contemporaneous with the possession. This brings the case within the rule recognized in Fremont vs. United States. (17 How. 357).

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Franquet found the post of Ste. Marie on a seigniory, confirmed by the King, the year before he arrived, to DeBonne and de Repentigny. The grant is of "the place (*le lieu*) called the Saut Ste. Marie, with six leagues *de front* on or at the portage by six leagues *de profondeur*, bordering the river which separates the two lakes.

The lakes are not named, but it is clear, from the fact that de R. had been sent up there in 1749 and that the French had had a mission there (*see Charlevoix' map*), since 1671, and from other historical facts, that the lakes were Superior and Huron, and the river the St. Mary's.

The description plainly designates the north side of the tract as the front, for there was the *portage;* and the sole object of referring to the portage at all was to show that the front *included it.* It could not have been intended that the portage was to constitute the *line* of the front, because this would pre-suppose that the portage was 18 miles long and terminated far above the head of the river. And this idea is farther contradicted by the language of the grant, which is that the place (*le lieu*) granted *borders the river*—which could not have been the case if the portage was the line of boundary, as this would necessarily have left an ungranted strip between it and the river.

The portage is, therefore, referred to merely to show what was regarded as the *front side of the tract.*

This front side was to be six leagues. Of course, the front must have its point of beginning on the *river bank;* and as the language plainly implies what was the case with all French grants fronting on streams, the front must be measured by a straight line, not a crooked one following the sinuosities of the water line.

And the depth to the southward was to be also *six leagues.*

The intention of the grant was doubtless to give the grantees thirty-six square leagues, as nearly as practicable; and, as the general course of the river from the old post was in an almost southeastern direction, it became requisite in order to get the width of the tract *from east to west*, (i. e. the front part), to commence a line at a point on the river considerably below the old post, so as to make up what the tract would lose at the *northeast* by what it would gain at the *southeast*, as near as practicable. This would be a fair average, and the line thus drawn or rather taken as a standard would give a full front of six leagues, looking to the north.

And this is what Franquet manifestly did; for we find his western boundary line of the tract, using the compasses and being guided by *his scale*, to be just six leagues west of that part of the river which is just about the middle of what is now Hay Lake, and eight or ten miles down stream from the old post.

This western boundary he lays down on his map; and we find it falls a little west of the western extremity of *Whaiskie Bay*, and enters Lake Superior near *Point Iroquois.* From this point on the lake he measured exactly six leagues south, thence east until he struck *Mud Lake* at the mouth of the *Munuskong* river. This line is found by the scale on his map to be five French leagues. (*Morin's dep. fol.* 627; Bouchette's dep. fol. 639, to show that the actual length of Franquet's west line is six leagues and of his south line five leagues.

The most natural and obvious means of applying these lines to the ground is, first, to measure the distance on F.'s map from the western extremity of Whaiskie Bay to his western boundary line; from thence north to the shore of Lake Superior; and where this line strikes the water is our *place of beginning.* Then measure south six French leagues, thence east till you strike the river (in Mud Lake).

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And this is done in the chart of the Dist. C.

And this mode of ascertaining the starting point may be resorted to without going on the ground, by using Franquet's scale and applying the compasses to the maps made by the United States Surveyors; thus establishing the boundaries of the tract by reference to those surveys. The map may be located by natural objects, as in Sutter's case, 21 How., 175–6.

Even in the absence of Franquet's map this would be the most obvious mode of ascertaining the boundaries, for it plainly carries out the intention of the grant. *It admits of this construction, and does not admit of any other. See Fletcher's dep. fols.* 636–7, *page* 172.

This map is proved to have been taken from the French archives in Paris, its proper place of deposit. The Court will presume that Franquet had authority to make it, as being "the act of a public officer purporting to be exercised in an official capacity," etc.

United States vs. Peralta, 19 How., 347.
Also, *Strother vs. Lucas*, 12 Pet., 436 to 438.

Whatever uncertainty may have appeared on the face of the grant, the French Government gave it a *practical construction* by causing it to be mapped.

Stone vs. Clark, 1 Metc., 381.
4 *Cruise's Dig., by Greenl.*, 301, *in notis.*
1 *Greenl.* Ev. 300, 301, etc.

And the survey is to be presumed regular. (*Harris' Lessee vs. Burchan*, 1 *Wash. C. C. R.*, 196.

But it is said, the language of the grant leaves it uncertain whether the *front* line is to be a straight line, or a crooked one following the sinuosities of the water line on the river.

Though we should admit this ambiguity in the language, yet the Franquet map settles the meaning and fixes the boundaries.

United States vs. Peralta, *ubi supra.*

But there is no such ambiguity in the language when properly understood.

No one can doubt that the *front* or front side of the tract was to the *north.* This is necessitated by the words *sur le portage.* The portage is known to have been in the north part and near the river, passing round the falls. This fact is certain, and admits of no controversy: this portage was in the northern extremity or front of the tract. It was there when de Repentigny went there in 1749, and was well known in the history of the country. *Charlevoix*, (vol. 5, page 414–15, ed. 1744), mentions this portage on his map of the Saut. *Alex. Henry* pages 57 and 58, says the portage commenced at the foot of the falls and was a narrow *foot-path.*

The tract was to have a depth of six leagues (6 *lieues de propondeur.*) No one can doubt that this depth of six leagues was to be measured by a *straight line; straight*, because the tract was to have a depth of 6 leagues which could not be answered by a shorter or a crooked line. It is impossible to conceive of any but a straight line by which to measure the depth unless we resort to a line running down the river bank and following its meanderings. Such a line would necessarily be less than 6 leagues in length; which contradicts the grant. There is plainly but one line measuring the '*profondeur*'; and if this line does not begin on the *north side* of the tract, it is impossible to give it any beginning. For example,

if the front line should be laid down from the "centre of the portage" three leagues each way along the bank of the river, and the line of *depth* be drawn from the *terminus* of the first line on the river, south six leagues, it would make the tract much more than six leagues long from north to south; and if from the terminus of the second line, this line of depth would also make the tract more than six leagues long, though not so long as the first line.

But it is impossible to give the language any such meaning. The words "*de profondeur*" (in depth) plainly mean that the tract is to be six leagues long from north to south, and that this depth is to be measured by one single line and that line a straight one; in other words, that the body of the tract (*l'endroit*), as the grant declares, shall be six leagues deep from the north side to the south side.

If then, the words 'de profondeur' require a straight line, by what logic is it made out that the word '*de front*' require a shore or meandering line? The granting words are: "*nous avons accorde et concede, accordons et concedons le dit Saut Ste Marie avec six lieues de front sur six lieues de profondeur, bordant la riviere qui separe les deux lacs.*" It seems beyond controversy that the intention of the grant was that the the tract ("*le lieu*," "*l'endroit*," "*le Saut*," so called in the grant), should be as broad as it was deep; that the extent of its front should be the same as that of its depth, and that in both respects it should measure six leagues. This is not done if we make its width from east to west less than its depth from north to south.

Again: If its front side is the north side touching the river, why measure *it* with a meandering line and not measure its depth with a like line? It is as easy to do the one thing as the other. Its front along the river is as intelligible as its depth along the river. Yet we do not follow along the river to find its depth. Why? because the language '*de profondeur*,' in its depth, plainly requires the line to pass through the body of the tract. The language does not refer to the *side lines* of the tract, but to the whole body of it. And if, confessedly, those words require a line passing through the tract, why not give to the words '*de front* the same meaning, since both are to have the same extent? The 'profondeur' is, plainly, to be equal to the 'front,' and it is absurd to make the one expression require a meandering line and the other a straight line.

It is a settled rule that where no other figure is called for in an entry, it is to be surveyed in a square coincident with the cardinal points and large enough to contain the given quantity; 5 Pet. 485; 2 Wheat. 206; 6 Cr. 148. The rectangular form is to be preserved where a line is to be supplied by construction, 6 Cr. 148; 2 Pet. 201. The west and south lines of the tract, then, must be straight.

If it be said that the French words *de front* imply necessarily the extreme or outer edge, I reply that they do not. *Boyer* renders the expression "in the front;" Flemming and Tibbins call it an adverb equivalent to "in the front," "abreast." The dictionary of the Academy renders it, "pardevant;" "it signifies the extent which the front of an army, of a troop or of a house, presents." If then we read the grant—"six leagues *in the front* by six leagues *in the depth*," the ambiguity vanishes and both lines become straight and six leagues long.

The language of the concession is six leagues "*de front sur la portage.*" Now the word "*sur*" does not in this connection mean *on*, but "towards," "about," indicating the relation of nearness or neighborhood; which is one of its frequent uses—*Fletcher*, fols. 1145–6 *and the books he cites.*

See Dep't of Judges
Smith & Monk
p. 266 to p. 268
p 278 to " 280

To lay the front line along the bank of the river is to make a figure inconsistent with the obvious intention of the grant. Such a construction cannot be allowed, for it would greatly reduce the *contents* (36 square leagues), which is plainly one of the controlling facts of the grant.

U. S. v. Fossatt, 20 *How.* 426

There can be no doubt that Fanquet thus understood the language of the grant, and drew his map accordingly, making his starting point at such a place as would make up to the grantees at the southeast what they would lose at the northeast by a "give and take line," which was perfectly fair and reasonable.

The construction of the expressions "de front" and "de profondeur" in French grants on Detroit river has always been "wide and "deep." (See the before cited Detroit claims), the surveyor measuring them by a straight line perpendicular to the sides.

J. M. HOWARD,

Of Counsel for Appellees.

Corrected Copy.

Supreme Court of the U. S.

~~United States District Court~~

December Term 1866.

~~EASTERN DISTRICT OF MICHIGAN~~

No. 129.

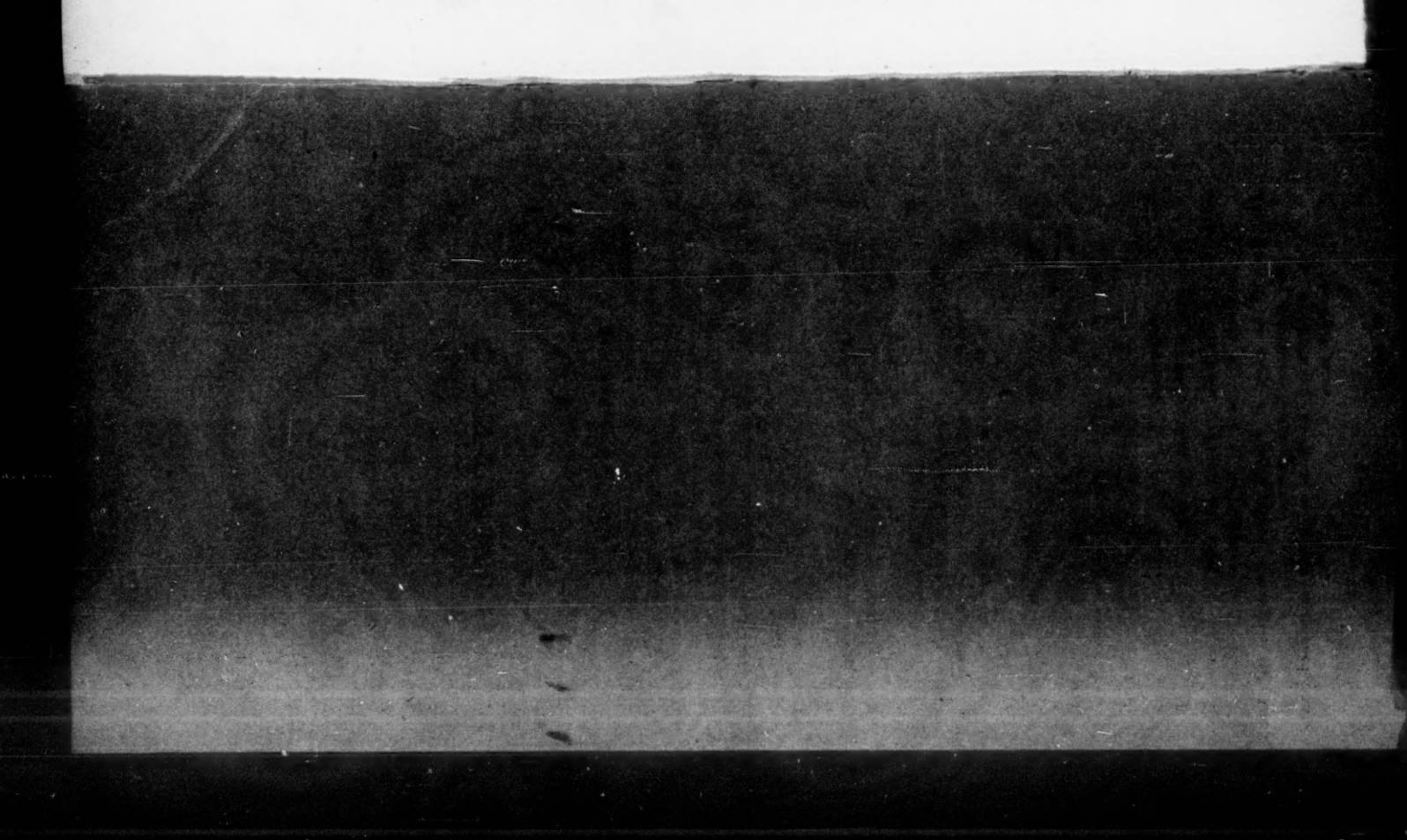
LOUISE PAULINE DE REPENTIGNY, AND OTHERS,
Petitioners,

vs.

THE UNITED STATES OF AMERICA,
Respondents.

~~BRIEF OF ALFRED RUSSELL, U. S. DISTRICT ATTORNEY.~~
On Behalf of Respondents.

DETROIT:
ADVERTISER AND TRIBUNE BOOK AND JOB PRINTING HOUSE.
1864.



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United States District Court

FOR THE

EASTERN DISTRICT OF MICHIGAN.

ISE PAULINE DE REPENTIGNY, *and others*,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondents.

E OF ALFRED RUSSELL, U. S. DISTRICT ATTY,
On Behalf of Respondents.

Rec. P. 1

he petitioners state that in 1750, the Governor Gen and Intendant General of Canada (then known as France), granted a Seignory in the Upper Peninsula wo officers in the French army, then serving in the ch-English war, the Sieur de Bonne and the Cheva- de Repentigny. That the title is further confirmed by gular patent, granted in 1751 by Louis XV. over ignature of that monarch himself.

" " 3

(*Copies, Appendix below,* **A. B.**)

" " 5

hat the Sieur de Bonne was killed at the siege of ec, in 1760, during the attempt of the French to ture that city, after its taking by Wolfe, in the cele- d battle on the Plains of Abraham. That the Che-

valier de Repentigny remained in Canada until shortly after the treaty of peace in 1763, when he returned to France. That he continued serving in the French army, had command at the Isle of Ré and at Rochefort, and during the Revolutionary War commanded a French regiment, stationed at Guadaloupe, in the West Indies. That the Chevalier died in Paris in 1786, leaving a son from whom the present French claimants claim their title by inheritance. That the Sieur deBonne left one heir, Amable, who remained in Canada, and sold his interest in the Seignory in 1796 to a man in Albany, named James Caldwell, who in turn sold to an Irishman, named Arthur Noble. That the latter, in his will, devised it to his nephew, John Slacke, who, also, by his will, left it to his wife, Agnes Slacke, in trust. And that it was by her conveyed to a Mr. Battersby, also in trust, and by him to Guy Rotton, now a Lieutenant Colonel in her Britannic Majesty's artillery, serving in India.

The grant was expressly on feudal tenure, and was also conditioned upon the future improvement, clearing and cultivation of the land, and its continuous occupation by the grantees. De Bonne made no attempt at performance of the condition. De Repentigny visited the property and made some feeble attempt, but left the place in 1755 and the continent in 1763, when Canada passed to the English Crown. The respondents acquired title in 1776, possession in 1796, and extinguished the Indian title in 1820. In 1826 the claim was presented to Congress.

The property in dispute comprises, according to the United States Land office certificate, 216,090 acres (according to M. Bouchette, one of the petitioners' witnesses, 214,400 acres), 335 square miles of territory, of which about 108,000 acres have been granted by the United States to private individuals.

The value of land per acre in that section is not very high, but the private act under which these proceedings are instituted, provides for the *floating of the claim*, as

the portion so granted to private individuals, by the sue of land warrants for a corresponding area of *any* her lands belonging to the United States.

So far, therefore, the land claimed is as valuable as e best un-entered land in the possession of the United ates.

The labor bestowed upon the case has been quite in oportion to the magnitude of the interests involved, and the lengthened period over which the facts of the case e spread, upwards of a century.

The petitioners obtained their private act, giving the nited States District Court Jurisdiction, in 1860.

(*Copy, Appendix below* **C.**)

This act adopts the Missouri act of 1824.

The petition was filed Dec. 3, 1861. Record p. 1

The answer of the United States was filed December th, 1861. " " 17

The following testimony has been taken by the peti-ners:

61, December—At Detroit, Mich. " " 23

Depositions of M. Favarger, petitioners' agent.
M. Wilkinson.

Eighty-four folios, besides upwards of fifty exhibits.

62, October—At Sault Ste Marie, Mich. " " 65

Depositions of M. Biron, relative of Cadotte family.
M. Gurnoe, do.
Mme. Gurnoe, do.

Hundred and sixty-five folios.

62, October—At Guadeloupe, West Indies. " " 79

Depositions of M. le Baron de Jonquières.
M. Picard.
M. Johanneton, Notary.
M. Louis Thionville and M. Aug. Thionville, notaries of the petitioners De Repentigny.

Hundred and eighty-four folios in French.

Rec. p. 132

1863, March—At Paris, France.
Depositions of M. le Comte Du Fayel, rel
of the De Repentigny family
M. Violet, formerly law agen
the De Repentigny family.
Mme. Du Petit Thouars.
M. Le Comte de Bouillé.
Mme. La Comtesse de Bouillé.
M. Fabre, advocate of the
bar.
Hundred and sixty-two folios in French.

" " 247

1863, May—At Detroit.
Deposition of Hon. J. M. Howard, petitio
solicitor.
Nine folios.

" " 151

1863, May—At Montreal (No. 1).
Depositions of Mr. Rotton, brother of petiti
Rotton.
Mr. Morin, Land office, C. E.
Mr. Bouchette, Land office, C
Hon. Wm. Badgley, Judge, C
Six hundred and twenty-seven folios.

" " 254

1863, October—At Montreal (No. 2).
Depositions of Hon. James Smith, Judge, C.
Hon. S. C. Monck, Judge, C.
Two hundred ninety-four folios, besides exhibits.

The Respts. have examined:

249

1863, October—At Washington, D. C., Mr. Dallas, U.
Land officer; 75 folios.

286

" " At Sherbrooke, C. E., Hon. J. S. Sanb
advocate, 363 folios.

" " At Quebec, C. E., Mr. Fletcher, surve
81 folios.

In all upwards of 2000 folios.

There are, besides these depositions, large piles of d
umentary evidence, in the nature of extracts from pu

records, exhibits referred to in the depositions, conveyances, and other muniments of title.

A FULL INQUIRY into the present validity of the *whole* title is imperative in this case. See *infra* Point XI.

PRELIMINARY OBJECTIONS.

I.

THE CLAIM IS BARRED BY EFFLUX OF TIME, ACCORDING TO THE WRITTEN LAW, AND IN EQUITY ASIDE FROM SUCH LAW.

It is urged by the petitioners that the government cannot prescribe or avail themselves of lapse of time, it being apparently supposed that the *converse* of the maxim *nullum tempus occurrit regi* is true. This is an affirmative proposition which the petitioners must prove; on principle and authority the law is the other way.

United States vs. Moore, 12 How. 223.

a case of much the same nature as the case at bar.

The litigation between Government and the petitioners is, under the act of 1824, to be regarded simply as a litigation between man and man; so held in the first case adjudged under the act of 1824.

United States vs. Arredondo, 6 Peters, 711;

and reaffirmed,

Glenn vs United States, 13 How. 257.

again by Wayne, J.

United States vs. Castillero, 2 Black, 319, 320, 321.

Government sues but does not allow itself to be sued, thus disallowing the converse proposition.

Again it is held, under a state of facts similar to the case at bar that, where "the Government had taken posses-

sion and had sold out the lands to a great extent, and was bound in good faith to protect its vendees, it being clear that these private owners could have relied on the lapse of time and defeated the claim set up, on principle their vendor—the United States—could do so likewise.

United States vs. Moore, 12 How. 233.

In the petition there is no allegation whatever as to the date and circumstances connected with the first alleged wrongful possession or resumption of the fief.

In the evidence, though inquiry was particularly directed to the point, no facts have come out tending to show that the Government of the country was guilty of obtaining the possession in any forcible, tortious, illegal or even irregular manner. *Ex diuturnitate temporis omnia presumuntur solenniter acta.*

Angel on Lim., p. 5.

If the Government had been guilty of any thing of the kind, the petitioners had the same remedies then, and ever since, as now, but they have lain by too long, the state of things which, the respondents maintain, justified the reunion, is admitted to have existed for a century!! The actual reunion, however effected, has been a matter of fact as well as of right, for now at least 79 years, during which the United States have had possession; at this distance of time, and after such acquiescence, it is not to be *presumed* that the proceedings of the sovereign, before going into possession, were irregular, but even if it were the petitioners are barred :

Firstly, If it be contended that the title in this case comes as the petitioners claim within the general rule of being subject *exclusively* to the laws of the State in which the land lies, and therefore to the Michigan code.

See Ca. Ci. Washb. II. 522.

It is submitted that the petitioners, and those under whom they claim, not having commenced an action, nor

made entry within thirty years (nor within three times thirty years), after the alleged right first accrued to their predecessors—by the laws of Michigan

Comp. Laws, Mich. II. 1403, and laws cited in note.

they can not now recover.

NOTE.—If a person, entitled to bring action, shall be absent from the United States, his heirs are allowed ten years in addition to the twenty years allowed to himself, but no further time.

As to rules of Equity see infra *thirdly*, p. 12.

Secondly, Again, if it be contended that, according to the act of 1860, the private act, the adjudication in this case can *only* be according to the laws and customs of the country from which the title of the petitioners, if any, was originally derived.

It is submitted that this can only mean the laws and customs referred to in the grant by virtue of which the petitioners claim, that is to say the *Custom of Paris*, or old French Common Law.

In this connection it is to be observed that the petitioners had to choose whether to found their claim upon the Coutume or upon some other foundation; that they *have* founded it upon the Coutume, in accordance with their private act, and cannot in the course of the argument be permitted to repudiate *orally* a tenure which they dare not repudiate by matter of record without *ipso facto* incurring forfeiture, both by laws of the Coutume and by the Common Law.

See Ferriers Dictionary Art. "Desaveu."
Montreal Depositions No. 1, Badgley's reply to 13th Direct Interrogatory, §§ 3 and 4.

This Custom is incorporated in the grant by its very terms. Prior to 1783 the prescription had begun to run, and an act of the Legislature of Michigan was requisite to abolish the coutume in any case; and when abolished in 1816, rights previously accrued were specially excepted.

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Rec. p. 188 to 691

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It is no answer to say that the change of government in 1776 abolished it. It was in force over the *locus in quo*, until changed by positive legislation.

Mitchell vs. United States, 9 Pet. 734.

Considering the lands therefore as held under "strictly feudal tenure," (as Judge Felch terms it, *Sen. Rep.* 1848), and liable exclusively to the *Coutume de Paris*, under the following articles of the *Coutume*, especially the latter, *prescription* is clearly against the petitioners.

If any one has enjoyed and possessed a hereditament or rent by just title * and in good faith, himself as well as his predecessors whose right and pretensions he has, undisguisedly and without disturbance during ten years, as between parties present, (and during twenty years as between parties absent), of full age and unprivileged, he acquires prescription of the said hereditament or rent.

Si aucun a joui et possedé heritage ou rente à juste titre et de bonne foi tant par lui que par ses predecesseurs, dont il a le droit et cause, *franchement* et sans inquietatation par dix ans entre presents et vingt ans entre absents, âgés et non privilegiés, il acquiert *prescription* du dit heritage ou rente.

See 113th Article of the Coutume.

* Just title means a title good to the belief of the possessor. Bourgon's Droit Commun de la France, Tit. 22, Ch. 2. Pothier's Traité de la Prescription, 1 P. Ch. 3.

And again:

If any one has enjoyed, used and possessed an hereditament or rent during thirty years continuously, himself as well as his predecessors, un-

Si aucun a joui usé et possedé un heritage ou rente par l'espace de trente ans continuellement tant par lui que par ses predecesseurs franche-

disguisedly, publicly and without any disturbance, he has acquired prescription as between persons of full age and unprivileged, *even supposing that he may not produce any title deed*,

ment, publiquement et sans aucune inquietation *suppose qu'il ne fasse apparoir de titre*, il a acquis préscription entre agés et non privilegiés.

118th Article of the Coutume.

This last gives the possessor a right by prescription *even without title or good faith*, which are evidently omitted *ex industria*, provided only the possession have been "continuous, undisguised, notorious and undisturbed" for thirty years.

And this "prescription" is not only a bar of a remedy, and a bar of the right of possession as in

Taylor vs. Horde 1 Burrow 119.

but is actually a bar of the right of property,

Montreal Depositions No. 1. Badgley to last Interrogatory 7thly §. 76.

Rec. p. 207 to 750 mid

and the Crown in Canada avails itself of this title to support its possession of parcels of land required for fortifications, etc.

Montreal Depositions No. 1. Badgley to last Interrogatory 7 § 80.

" " 207 to 753 mid

Laporte vs. H. M. Ordnance, L. C. Rep. VII. 486.

As above remarked no evidence has been given that the first possession of the crown of Great Britain or of the United States was forcible or tortious. Cross-examination has been specially directed to this point by the respondents, but not a single fact to warrant any such inference, can be obtained.

Guadeloupe Depositions 7th Cross Interrogatory, which is evaded by all the witnesses, particularly by Aug. Thionville whose other replies are more full than required.

" " 82

Rec p. 161 fo 602
" " 135

Montreal Depositions (No. 1) 13th Cross Interrogatory and Badgley's Reply § 22
Paris Depositions 5th, 7th, 9th and 11th Cross Interrogatories and all the replies thereto.

Thirdly. Arredondo's case settles that this proceeding is substantially a Bill in Equity. The petitioners are barred by the rules of equity proper, which are in strict "analogy with the rules of law, whenever any statute has fixed the period of limitation, and Courts of equity refuse relief to stale demands, even in cases where no statutable limitation exists," etc.

Cholmondely vs. Clinton 2 Jac. and W. p. p. 138, 141, 148, 150, 151, 152, 154, 155, 174, ca. ci, viz.:
Beckford vs. Wade, 17 Ves. 96.
Bonny vs. Ridgard, 1 Cox 145.
Andrew vs. Wrigley, 4 Bro. C. C. 138.
Hercy vs. Dinwoody, 2 Ves. 87.
Stackhouse vs. Carnston 10 Ves 466.
Gregory vs. Gregory, Cooper's Rep. 201.
Smith vs. Clay Amb. 645. 3 Bro. C. C. 639 n.
Bond vs. Hopkins, 1 Sch. and Lef. 429.
Hovenden vs. Lord Annesley, 2 Sch. and Lef. 630. 636.
Medlicott vs. O'Donnell, 1 Ball and Beatty 164.
Daire, vs. Beardshaw, 1 Ch. Cas. 39.

Further, The Supreme Court has repeatedly held that reasonable diligence is necessary even if no statute of limitations exists which is applicable.

Bowman vs. Wathen 1 How. 189.
U. S. vs. Moore, 12 How. 222.
Maxwell vs. Kennedy, 8 How. 210.
Piatt vs. Vattier, 9 Pet. 405.
McKnight vs. Taylor, 1 How. 161.

We shall show hereafter, that there was not reasonable diligence on the part of the petitioners.

Again, a lapse of 40 years and change of value renders a claim stale—though there be no fraud.

Wagner vs. Baird, 7 How. 234.

And, possession which would bar an ejectment will also bar an equitable title.

Hunt vs. Wickliffe, 2 Pet. 201.

Now, De Bonne never had possession at all, De Repentigny abandoned in 1755, or at latest in 1762 at all events we never hear of him again after his improvements were burned in 1762.

The British Crown took possession in 1762.

Henry's travels p. 61.

De Bonne rendered homage, *valeat quantum*, in 1781 but that ceremony was a mere form, which the Govern, ment could not refuse when tendered, it was not by any means a sufficient substitute for actual seizin, still less for compliance with the conditions subsequent; at all events it could not enure to the benefit of his co-grantee, and besides this the benefit of the act of homage was expressly suspended.

De Bonne's Representatives first petitioned Congress in Dec. 1826.

De Repentigny's Representatives first petitioned Congress in May 1846.

No *effectual* proceedings were had before Congress until 1860.

It is submitted, that under these circumstances a possession acquired by the Government of the country, existing for a century, and acquiesced in for so many years by those whose interest and duty it was to disturb it, if it had been wrongful, is not now to be *presumed in* the absence of all proof to have been wrongfully or illegally, or even irregularly acquired. The act of homage of 1781, was no recognition of a possession not otherwise proved.

Sherbrooke Depositions, Sanborne to 5th and 6th Interrogatories §§ 12.

Rec. p. 301 et seq

The benefit of that act was suspended until the production of the ratification, and it has not been shown

Rec. p. 215 bottom

that this suspension was ever removed; but whether it was or not. De Bonne appears in it as owner of his moiety (3 leagues water frontage) in severalty, and the act could not enure to the benefit of his co-grantee; thus the petitioners are clearly barred by efflux of time under every law, which can possibly govern the case, unless they can show a possession of part of the lands in some person holding as their tenant or agent.

The sole answer of petitioner to this point is that they have been reasonably active, and that the act of 1860 is a *waiver* of this statutable and equitable bar.

But that act merely refers the questions arising on the claim to this Court. This simple reference for adjudication settles no question necessarily involved in arriving at a decision, certainly not this primary and gravest question.

I strenuously urge here upon the threshold of the case that the petition should be dismissed upon the equitable bar of lapse of time, and the laches of petitioner from 1755 to the present date, without entering upon the boundless field of inquiry beyond.

The claim had its origin when George the Second was King of England, and the Fifteenth Louis King of France —twenty-six years before the United States took their place in the family of nations; and the reports, English and American, may be searched in vain for an instance of the upholding of a claim of one half the age of this.

Fourthly. There is, it appears partly from public records, and ancient printed books of travels, and partly from the depositions of living witnesses, evidence that between 1750 and 1762 the French and English governments, and at a date subsequent to 1762, among others a person named Cadotte and his descendants, through whom the petitioners do not claim, and who be it remarked, are not named in the petition though his descendants are still in possession and claim adversely to the petitioners, were seized of the most prominent and

important part of the lands covered by the alleged grant; (supposing it located on the south side of St. Mary's River,) in part the site of the present Fort Brady, and the petitioners assert that this Cadotte was an agent or tenant of theirs, and that his possession being theirs, the statute does not run, and no title by limitation or prescription, or, by the rules of equity proper, has been acquired by the United States.

It is fully admitted that he may have been a commercial agent of De Repentigny's. (Power of Attorney, May 29, 1761, Doc. 18, Petitioner's List,) though it is more probable that he held the furs etc. referred to, only as a sub-employé of the Government, whom De Repentigny represented in a semi-commercial capacity, being what Alexander Henry calls "the officer, who was called the Governor; but was in fact a clerk who managed the Indian trade on Government account" and Cadotte is spoken of as an interpreter, apparently *an employé of the Government.*

Rec. p. 115

Henry's Travels, 1762 p. 58.

It appears, that De Repentigny did not trade on his own account, being thus not disqualified for the cross of St. Louis.

Application for a Cross of St. Louis, Paris Doc. No. 19.—Doc. 14. Petitioner's List. " " 113

but there is no evidence *whatever*, of his being in any other respect his agent, still less of his being the agent of De Repentigny's descendants; and still less of any privity of title of any kind between De Repentigny and him; but into this last point we must enquire more at length.

It is true, that according to the testimony of two of the witnesses in the Sault St. Marie Depositions.

Louis Gurnoe to 7th and 8th Cross Interrogatory. " " 75-
Madame Gurnoe to 7th and 8th Cross Interrogatory. " " 77-78

Cadotte's possession would seem to have *begun* soon after

Repentigny's possession *ceased*; but, when we have said this, we have said all that can be said about it on behalf of the petitioners; the testimony goes no further, it tends to establish the *post hoc*, but not in any respect the *propter hoc*, and there is no evidence whatever, of any connection in the nature of privity of title between De Repentigny and Cadotte. He may have been the person referred to in one of the documents relied on by the petitioners.

Paris Document No. 15. Doc. 6. in Petitioner's List.

Rec. p. 108 bottom

as "the Frenchman married to an Indian woman and who took a lot from which he expected to raise 30 to 35 bags of Indian corn;" but it was customary for the French settlers in general to take Indian wives—in fact their lives were insecure otherwise—and it is just as likely, that he was *not* the person so referred to. The court cannot so strongly presume that this Frenchman *was* Cadotte as to give a decree on the strength of it—it beingthe turning point of the case with one other, (whether a judgment is necessary to a re-union.)

There is evidence to raise the presumption of Cadotte's absolute ownership *in the absence of other testimony.*

" " 72
" " 75-
" " 77-78

Sault St. Marie Depositions.
Biron to 5th Cross Interrogatory (5thly)
L. Gurnoe to 5th Cross Interrogatory.
Madame Gurnoe to 5th and 8th Cross Interrogatory.

But there is no evidence whatever, of any privity of title between De Repentigny and Cadotte. On the contrary, there is distinct evidence, that Cadotte held by a title acquired *from the Indians* subsequently to De Repentigny's abandonment.

" " 75-
" " 77-78

Sault Depositions L. Gurnoe to 8th Cross Interrogatory.
Madame Gurnoe to 7th and 8th do.

And his and several other private claims covered by the alleged grant, appear since to have been held wholly without reference to the Coutume de Paris, or to any superior landlord or seigneur whatever, and to have passed from hand to hand as an estate in fee simple, and by deeds and testamentary dispositions which make no provision what-

ever for payment of rent, and are in fact quite inconsistent with the supposition of the owner holding by any subordinate tenure.

Reports U. S. Land Commissioners vol. 4. pp. 227—229.
Henry's Travels p. 58 et seq.
Carver's Travels 1781, p. 141.
Sault Ste. Marie Depositions ubi supra.

Rec. p. 72 to 78

Again the Sault Ste. Marie witnesses put forward by the petitioners, depose that Cadotte's farm was "held in "the same way as all the other f rms thereabouts were "held," and this, they say is, "not for a term of years "or subject to rent," but "merely getting possession," *e. g.* by "marrying an Indian woman, and holding it until "obliged to purchase it from the U. S. Government."

" " 72
" " 75-77-78

Sault Ste. Marie Depositions, Biron to 5th Cross Interrogatory 1stly, 3dly and 5thly.
L. Gurnoe to 5th Cross Interrogatory.
Madame Gurnoe to 5th and 8th Cross Interrogatory.

All of these three witnesses are members of the Cadotte family selected by the petitioners on account of their superior knowledge of the facts.

The unavoidable inference from the whole testimony as to Cadotte's tenure, is, that *he held as a "squatter,"* but a squatter *who repudiates any intermediate proprietor* between him and the Government of the United States.

The petitioners rely on the case of

Potts vs. Gilbert, 3 Wash. 475.

to establish among other things, that the adverse possession must be continuous in a single possessor, so as that separate periods of possession in separate possessors cannot be "dove-tailed" together, to make up the entire period of time required to confer title.

But in the case at bar the superior domain is not in the position of a stranger intruding, it is a *bona fide*

reversioner, it enters *having title*, and therefore the entry and seizin of a part would be sufficient.

Green vs. Liter, 8 Cr. 229. 250.
Angel on Lim. § 400. p. 493 and ca. ci.

Besides, the Governments who succeeded one another in the case at bar are not in other respects at all in the position of the adverse possessors in the case cited by petitioners, they did not hold by titles distinct from one another, but by one common privity of title; they are in a position exactly analogous to the every day case in England of a landlord owning, by virtue of two mesne conveyances from the original purchaser, a farm which had been leased by that purchaser to an absconding and repudiating lessee who abandoned it 100 years ago, when the present landlord's vendor, or his vendor's vendor, entered into possession—it is unnecessary to cite authorities to show that the possession of either vendor is in such a case as good *against the lessee* as the possession of the last purchaser, and that the last purchaser is entitled to compute the successive periods of possession by his vendors and himself respectively, and take credit *as against the lessee* for the sum total as if it were in fact one unbroken period of adverse possession.

But in fact the case cited does not apply at all, because it relates only to the "dove-tailing" of adverse possessions in separate *parcels of land*, and not to the "dove-tailing" of adverse possessions during separate *periods of time*.

The petitioners also claim that the *prescription* of the Custom of Paris could not run against De Repentigny while engaged in the military service of the King of France and they cite.

Pothier—verbo "Prescription" part I. C. I. Art. III. p. 162.

This observation of Pothier's could not in any case apply to any portion of the period (commencing 1763,) during which the country had ceased to belong to France;

but the fact is that Pothier's doctrine is not recognized by the authors generally under the old laws of France, was not admitted by the compilers of the code, and *is not in any of the codes.* Itwas founded on the supposition of a soldier's ignorance of civil matters.

Merlin's Repertoire verbo " Prescription " Question VIII.

but De Repentigny received his grant upon terms and for a public policy, which he specified himself in his petition for the concession, and of which he cannot pretend ignorance.

Res. p. 4 toth

Fifthly. Petitioners are not entitled to the benefit of the Treaty of 19th Nov. 1794, etc.

See *infra* Point IX. 4thly, p. 50.

II.

AS TO ADVERSE CLAIMANTS.

The Private Act requires that the names of all persons claiming adversely to the petitioners, and the precise quantity of land so claimed adversely should be stated in the petition; this has not been done, and its neglect will possibly be attended with great inconvenience in the event of a decision in favor of the claim for it seems hy a certificate from the Land office, produced by the petitioners, that there are at least some hundred and twenty-one patentees of the United States, and who it is submitted, must be considered adverse claimants; it is plain that the Land office in proceeding to issue Land warrants to be floated in the event of such a decision, under section 2 of the Private act will be unable to fix the "*area of any such adverse claims*", in respect of which the Land warrants would have to be issued.

Moreover the Private act directs that the Missouri lands act, 26 May 1824, should govern the present pro-

ceedings, and under that act the precise area of such adverse claims must be ascertained by decree.

United States vs. Moore, 12 Howard, 209.
Same vs. Davenport's Heirs, 15 Howard, 1.
Same vs. Roselius, 15 Howard, 36.

As to the application of the Missouri act to the present case

See post Point XI. pp. 59, 60.
United States vs. Arredondo, 6 Pet. 710.
United States vs. Fossatt, 21 Howard, 449.

III.

AS TO SECURITY FOR COSTS.

The Private act directs, as above stated, that these proceedings should be assimilated to those under the Mis souri Lands Act, and under it claimants are required to give security for *all* costs, charges and expenses.

United States Statutes at large, vol. 4, p. 54.

The District Attorney drew the attention of the proper officer to this point early in the proceedings (7th December, 1861, four days after receiving copy amended petition), but it is believed that this security has not yet been perfected.

IV.

AS TO JURISDICTION.

The lands have not been shown to lie on the South or United States side of the St. Mary's river, within the jurisdiction of the Court; they may lie exclusively on the North side, or partly on the North and partly on the South sides.

See infra point VIII, p. 27..

See also at great length on this point

Reports Com. Senate No. 209, 30th Cong. 1st Session (Judge Felch's Report, p. 2 et seq.)

V.

AS TO WANT OF PARTIES.

With regard to the De Repentigny moiety, it has come out in evidence since replication filed, that on the death of Louis, Jr. (1820), and Theodore (1811), sons of Gaspard, a portion of their interest (one quarter), was considered by French lawyers adduced as witnesses by the petitioners,

Acte de Notorieté, p. 4, appended to Guadeloupe Depositions. Guadeloupe Depositions. Reply Aug. Thionville to 13th Interrogatory.

Rec. p. 37 - to 68
" " 94 to 114

to have passed to their mother, Madame Gaspard, whom Gaspard married at Guadeloupe, and who appears to have died intestate in 1834 or 1836, leaving a husband, the Comte de Marchais, recently deceased, who was also a creditor of her's, to a considerable amount, 80,000 francs, surviving.

Guadeloupe Depositions. Reply Aug. Thionville to 13th Interrogatory.
Acte de Notorieté, 1841, p. 4.

" " 94 to 114
" " 37

And the Comte Du Fayel is another creditor of hers, to a large amount, over 62,000 francs, and he speaks of this estate as his "security."

Paris Depositions, Du Fayel to 1st Cross Interrogatory.

" " 138 bottom

It does not appear that the Countess or her creditors ever formally transferred their rights to the petitioners.

Guadeloupe Depositions, p. 83 original.

" " 94 to 297

The Count de Marchais seems to have died in 1862, and as regards the interest of the Countess and her creditors, no person is before the Court.

It is also in evidence that on the death of Theodore René (27th December 1821, aged four years), infant son of Camille, one quarter of his interest was considered in the same way, to have passed to his mother, Madame Camille.

Rec p. 97 fo 316
" " 37
" " 8

Guadeloupe Depositions. Reply Aug. Thionville to 5th Cross Interrogatory.
Acte de Notorieté, p. 4.

This is inconsistent with the allegation in the petition (page 4, A.) that Camille died 1820, leaving petitioners his only children and heirs at law. There is no allegation nor evidence as to the transfer of this share to the petitioners, and as respects this share which amounts to ONE-HALF OF CAMILLE'S interest.

" 223

Montreal Depositions (No. 1). Badgley to 4th Additional Cross Interrogatory.

no person is before the Court.

In this connection it may be most convenient to discuss the question whether it is the laws of Virginia, the ordinary law of Michigan or the custom of Paris which governs the property and devolutions of property in this case. We maintain that it is the custom of Paris, and that we are bound by the words of a grant "strictly "feudal in the terms of the tenure."

Such apparently was Judge Felch's opinion also when the petitioners were before Congress.

See his report above referred to, p. 2.

The grants of 1750 and 1751 are either good valid and subsisting or they are not so. If they are so, it is the law of tenure and descent referred to in them, the Coutume de Paris, which is the *lex rei sitæ* as regards the devolution of the estate, which is the subject, in fact the creation, of that grant, a grant be it remembered *to a "man and his heirs and assigns in perpetuity * * * to hold according to the Coutume de Paris.*" Words cannot

more clearly express what is to be considered the *lex rei sitæ* as to matters of tenure and devolution of property.

The ordinance of 1787 for Government of the North Western Territory expressly saves to the French and Canadian *inhabitants* their laws and customs relative to the descent and conveyance of property.

The Cass code, which in 1810 repealed the laws of the Coutume de Paris, did so with *saving of rights accrued;* but in fact it is not in the power of any legislation to alter the provisions of the grant of 1751, for it would amount to passing an "*ex post facto* law" and "one which would impair the obligation of contracts" which would be unconstitutional and inoperative.

Constitution of U. S. Art. 1. Sec. X. ¶. 2.
Bronson vs. Kinzie 1 Howard 311.
McCracken vs. Hayward 2 Howard 608.

The petitioners may possibly allege that the devolution of the estate is governed by the laws of Virginia under the Charter of James I. and the Constitution of that State; but as lately as 1781, De Bonne's Representatives recognized the fact that he held by feudal, and not Virginia law and tenure.

Montreal (No. 1.) Depositions, Badgely to 12th Interrogatory. Petition Exhibit I.

those laws of Virginia never had any real existence or force, (nor has the least evidence been given of their having been administered *as such*) in that part, if indeed in any part, of Michigan; they never formed the *actual lex loci rei sitæ*—

Abbott vs Godfroy's Heirs 1 Mich. 178.

establishes that even the ordinance of 1787. was excluded from Michigan by *British law* until 1796, how much more was the law of Virginia excluded; but, whether or not the petitioners have introduced into the petition no allegation whatever of their title being derived

under the laws of Virginia, they have on the contrary alleged a title under the custom of Paris, and they cannot be allowed *orally* to set up in argument a title in Virginia—as existing even in contemplation of law—when it is notoriously inconsistent with the title which *by matter of record* they have alleged to have existed in the King of France subsequent to such charter of James I., and under which French title alone they have any claim; the claim of Virginia existed over the *locus in quo* as much in 1750 as in 1776, and was as potent in the former as in the latter year. If petitioner's proposition is good, Virginia owned the land when the King of France granted.

Rec. p. 311

The inheritance is thus by the terms of the grant *inseparably* connected with the discharge of certain duties, and it cannot devolve upon any but the *same persons*, who are as "heirs," in the contemplation of the French grant, bound to fealty, residence and improvement; in other words, if the grant is good, it is good in everything relating to tenure including the words which govern the devolution of the estate thereby created; if it is good, the title of the United States to the whole of Michigan was acquired SUBJECT TO THIS GRANT, and its provisions as regards the tenure of this *particular part* of Michigan and the *ex post facto* State law of descent cannot affect it; the same grant cannot be held valid for the purpose of founding a claim upon the United States, and invalid for the purpose of governing the devolution of the same estate which it created and which it purports to govern.

Again if it were not the Coutume de Paris, which was the *lex loci* so lately as 1796; the notary's deeds by which De Bonne conveyed to Caldwell, and the deed by which Caldwell conveyed to Noble, were informal and inoperative.

VI.

AS TO PETITIONERS' DERIVATIVE TITLE BEING NOT MADE OUT *prima facie*:—

A prima facie title has not been shown in the petitioners for

1st. All the mesne conveyances, devises and descents under which the petitioners claim are void for non-seizin of the respective grantors, testators and ancestors, accompanied by adverse seizin of the present possessors and their predecessors, and this according to common law and the Coutume.

Kent IV. 404*385.
Sherbrooke Depositions, Sanborn to 3d Interrogatory.

Res. p. 299 bottom
230 middle

2d. As to De Repentigny's moiety, the female petitioners have not shown a *prima facie* title for, besides the want of parties objected to, the Chevalier de Repentigny not having complied with the provisions of the treaty of 1763, and being an alien at and long previous to his death, [A. D. 1786] a title by descent from him as such is not valid.

See Infra "*Alienage and Escheat.*" p. 43.

3d. As to De Bonne's moiety the petitioner, Guy Rotton, has not shown a *prima facie* title for

Montreal Depositions, (No. 1) Badgley to last Interrogatory p. 137, Original Deposition.

" " 197 middle

there is no allegation or evidence of seizin by Louis de Bonne or any of his representatives, and the report of Committee of 1827 notices the absence of all proof of possession at any time.

Again by the Royal Arret of 1732 ALL SALES of wooded lands, like these, are VOID, and the lands attempted to be sold are declared to stand *ipso facto* [de plein droit] reunited to the superior domain.

" " 318

Edicts I. 531.
Sherbrooke Depositions, Sanborn to 12th Cross Interrogatory §. 3.

" " 315- top

Rec. p. 230

Moreover—the deed of 1796 from De Bonne to Caldwell was defective (in case the Court shall hold that the custom of Paris was abolished in 1776 or 1796.)

1st, Because it was a mere notarial contract under the custom of Paris, and inoperative in Michigan at that date July '96. The benefit of the Ordinance of 1784 [N. W. Territory] being confined to inhabitants of Michigan.

Also see Howard's Argument, p. 5. Not under seal, not operative at common law, and not conforming to formalities of ordinance of 1787, the local law.

" " 299, 311

2nd. Because it was, even according to the custom of Paris, defective for want of *tradition* and passed only the *jus ad rem* and not the *jus in re.*

Sherbrooke Depositions, Sanborn to 3d direct and 6th Cross Interrogatories.
See also U. S. vs. Castillero—2 Black 350.

End of preliminary objections.

VII.

AS TO THE TITE OF THE KING OF FRANCE.

As between the King of France and other great powers, that King had really no title enabling him to make the grant of 1751. " All the writers on international law concur in the " doctrine that occupancy is essential to the title of land newly " discovered and vacant."

See authorities cited Kent II. 319. Note.

" " 5-2

But these lands were then, and long afterwards, wholly unoccupied and not even surveyed, nor was the Indian title extinguished until by

The Indian treaties 16th June 1820, 5th August 1826, and 28th March 1836.

And at and previous to the time of the alleged grant the lands were actually claimed by the British Crown as lying

within the chartered limits of Virginia—a claim which the petitioners allege to have been afterwards substantiated.

Virginia Charter James I. Hening's statutes at large.
Constitution of Virginia 29th June 1776.
Documents Nos. —— in petitioner's list.

Res. p. 100

VIII.

IF THE KING OF FRANCE HAD TITLE HE DID NOT PASS THE LANDS BY REASON OF THE VAGUENESS OF THE CALLS.

The Grant is void for uncertainty in leaving it doubtful whether the parcels intended to be granted were not wholly on the Canadian side, or partly on the Canadian and partly on tho United States side of St. Mary's River. For all that can be collected from the petitioner's evidence the Canadian side of the river might then have been included, as it unquestionably would now be included, in the description "endroit—or lieu—nommé Le Sault Ste Marie," [place named the Sault St. Marie.]

But even assuming the parcels to have been intended to lie exclusively on the South or United States side of the river, the grant is void for further uncertainty in the "calls" because it does not describe the parcels by proper boundaries, but merely refers to a certain length of frontage upon the river, including the portage it is true, but not specifying the points where the frontage begins or ends.

See particularly Judge Felch's report p. 5.
Also see Infra, p. 29 et seq.

This uncertainty will further appear from the depositions in the cause.

The Canadian surveyors agree in considering Franquet's map correct. This map, however, cannot by any *coincidence* however remarkable, in the views of the Canadian witnesses be taken for more than it is worth. It does not pretend to be a survey of the *seignory*, it is a mere *extract* from Franquet's military survey of the whole frontier. Exhibit "B. B.," annexed to the Montreal Depositions (No. 1) is a similar extract containing a military sketch of Lake Champlain and some twenty

" " 170

seignories abutting on that lake, yet this is but a very small part of the frontier to the *whole* of which, as well as to the fortifications at Quebec and the other garrisons, his attention was directed.

Rec. p. 125 to 128

See documents 42 to 50 inclusive in petitioners' list.

It is too much to ask the Court to believe that a *military* engineer, charged at a moment of pressing danger with the defence of the boundary lines of *Kingdoms*, should during the very short stay of two years, which he made in the colony, find time, in addition to his military duties, to occupy himself with the duties of a land surveyor, and visit, measure and map out the boundaries of a single seigniory so remote and difficult of access as great portion of the land claimed is at the present day.

We are willing to admit that he may have given this seignory the same attention which he gave to the hundreds of other seignories which he has noticed in his military survey. He had to show their position in a general manner in their relation to the frontier, to the military posts and to one another, but it was no part of his duty to ascertain their *boundaries* still less to locate what was otherwise impossible of location.

In short if Franquet's map is worth anything its value depends upon other older maps from which it must have been taken with probably more or less modification. These older maps should have been produced, but have not. The map which has been produced comes from French custody, and the witness Morin who produces it states that certain *descriptive memoirs* by Franquet accompanied the survey from which he extracted both of the exhibits to which he refers, "A. A.," and "B. B." These memoirs would in all probability have thrown light on the sources from which Franquet's military survey had been compiled, (for we submit that a compilation was all that was *possible*) these descriptive momoirs are in fact part, and a most important part, of the survey which they accompany, and we have a *right* to see them. In their absence Franquet's map proves only that there is *one* more method of drawing the figure of the grant, *one* more possible figure of the superficies, to be added to the great number of possible figures which

" " 170

are all *considered* by some one or other reconcileable with the language of the "calls" in the grant of 1751.

Rec. p. 327 bottom

The Court can, however, can perfectly well judge of the worthlessness of the map by comparing it with the "calls" in the grant of 1751, which it cannot be pretended that Franquet's map, even if it had been the result of a regular survey, could set aside.

These "calls" give a water *front* of six leagues, yet Franquet's map gives a water front of TWELVE leagues! bordering upon the river.

Now the policy of the French Government was "to multi-"ply the number of grants upon the same river."

Quebec Deposition Fletcher to 2d Interrogatory p. 3, top.

" " 326 top

And cannot, in a case of grant by reference to its water frontage, be held to have used the words "six leagues frontage" unwittingly or so as to admit of a construction of *twelve* leagues frontage.

Mr. Dallas, the most competent witness obtainable at the General Land Office at Washington, establishes in his deposition the fact that the language of the "calls" is so vague that even upon paper no one figure of the superficies could be set out which would be the *only* figure necessitated by the calls.

" " 251
" " 252
" " "
" " 253

See Washington Depositions.
Dallas to 2nd Interrogatory §§ 1 3.
Dallas to 3rd Interrogatory.
Dallas to 1st Cross Interrogatory.
Dallas to 8th Cross Interrogatory § 1.

In fact, and on considering these depositions and accompanying map carefully, it will be seen that with the the best will in the world to give the grant a definite location, all depends on the *fancy* of the surveyor in *assuming* his "general shore line."

"Quot homines, tot sententiæ."

The grant clearly comes under that class of instruments characterized by Taney, C. J., in his summary of the older cases on the subject, as containing no "lines or boundaries whereby "any definite and specific parcel of land was severed from the "public domain * * * * * * and that,

"the description being vague and indefinite with no official "survey to give it a certain location, it could create no right of "property in any particular parcel of land."

United States vs. King, 3 Howard, 787.

In fact the calls are so vague that not only "the land "could not be identified without a survey" which was considered fatal in

United States vs. Boisdoré, 11 Howard 63.

But they are so vague that a survey [as prayed in the petition] is really *impossible.*

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And "in case of a vague description the Court has uni- "formly held that no particular land was severed from the "public domain by the grant and that *no survey could be ordered.*"

Villalobos vs. United States. 10 Howard, 541, 556, and ca. ci. viz. Buych vs. United States, 15 Pet. 224:
U. S. vs. Delespine 15 Pet. 333.
U. S. vs. Miranda, 16 Pet. 156, 157.

Again, "the locality, extent and boundaries must be found "before the Court can make an effective decree, and if these "cannot be found no decree can be made for any specific piece "or parcel of land." * * * * "*The Court "has no power to decree an equivalent for land that could not "be identified.*"

United States vs. Lawton. 5 Howard 28.

In this case the facts are quite similar to the case at bar, as regards the "calls,"

Again, "such a decree would not be an exercise of the "*judicial* power of the *Court*, but an assumption of the "*political and granting* power of the *United States.*"

United States vs. Boisdoré, 11 How. 93.

It is to be remarked that in this last case the "calls" pp.

87. 103. were much more specific than in the case at bar, and there had been possession with residence and cultivation of a portion of the land for 40 years previous to 1828—(p. 88.) and up to within about 10 years previous to filing the petition.

See also United States vs. Hanson 16 Pet. 196.
United States vs. D'Auterive 15 How. 14.
Denise vs. Ruggles 16 How. 242.
United States vs. Forbes 15 Pet. 173.
LeCompte vs. United States 11 How. 115.
Smith vs United States 10 Pet. 326.
Wherry vs United States 10 Pet. 338.

The foregoing cases occurred principally in Florida and Louisiana, where the custom of the Government had been to grant land by vague description in the first instance, creating what were called "incipient titles" until an official survey should be made and returned and then the grant took effect finally upon the lands specified in the survey.

See U. S. vs. Powers' Heirs 11 How. 570.

But no such custom existed under the French rule in Canada. This appears from the testimony of two officials connected with the Canadian Land Department and produced by the petitioners.

Montreal Depositions (No. 1.) Morin to last Interrogatory § 7.
" " " Bouchette Interrogatory § 5.
Quebec do Fletcher to 3rd Interrogatory pp. 4, 6 and 7.

Nor does it appear that any attempt was ever made to cure the vagueness of the "calls" in this case. For these reasons the principle of the above decisions applies *a fortiori*.

The California cases are of the same kind as those which arose in Florida and Louisiana, &c., being upon claims under grants in which the intention of a *subsequent official survey*, according to the general Spanish practice, is clearly apparent. And the Court merely held in the cases most favorable to the petitioner, and which we have been able to procure access to, that *when* such survey as was contemplated by the grant had been made and returned, it gave precision to the title and attached it to the land surveyed.

Fremont vs. United States 17 How. 559.

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And generally as to Government grants in California.

U. S. vs. Peralta 19 How. 343.
Fremont vs. U. S. 17 How. 542.

Further, as to the lands passing to De Bonne, there is no evidence of any entry by him in pursuance of the grant. There was no perfect act of homage by De Bonne. And no act of homage whatever by De Repentigny. In short there was by De Bonne a repudiation which amounts to a disclaimer, as by De Repentigny it will be shown that there was an abandonment of the estate created. But in fact De Repentigny's entry under a grant of this kind, *which does not contain specific metes and bounds*, never, at any time extended to the whole tract, but only to the portion entered on.

Angel on Limitations § 400 and ca. ci.

IX.

SUPPOSING THAT THE KING OF FRANCE PASSED THE LANDS. THE FIEF WAS ABANDONED AND IT REVERTED TO THE SUPERIOR DOMAIN.

1st. It reverted by natural law as an estate abandoned and *hereditas jacens.*

As between the superior domain and the grantees. The only occupation alleged and the only effort to comply with the conditions is on the part of De Repentigny, one of the grantees, and who appears from a very early period to have held his share of the grant in severalty, for the interest of each proprietor whenever referred to is alwaysdescribed as existing in a property having, not six but, three leagues of water frontage

Rec p. 15, 16, middle
" " 113 top

See Act of Homage, 1781.
Paris Doc. 29. (No. 13, in Petitioners' list.)
Report vol. 4, Public Lands, Dickens & Allen's, p. 863.

Thus the representative of De Repentigny's co-grantee cannot claim the benefit of De Repentigny's acts, and has none of his own predecessor's to rely on.

Yet De Repentigny's was only a temporary, and to some extent a mere *official* occupation.

Henry (Travels, p. 58,) says that under the French Government there was kept a small garrison commanded by an officer who was called *the Governor*, but was in fact a clerk who managed the Indian trade on Government acount..

Paris Document No. 94. (No, 3 (a) Petitioner's list.)
~~Paris Document No. 90. (No. 92 in do.)~~
Gov. Duquesne's letter, Oct. 13, 1754 to the French Minister, (No. 8, Petitioners' list, large blue bundle, and again, Detroit Depositions Favarger's exhibits No, 38.)
Document No. 9, Pelitioners' list, (large blue bundle.)
Montreal Depositions, (No. 1.) Badgley to 17th Interrogatory, § 4.
Paris Doc. No. 15. (No. 6, Petitioner's list.)
Paris Doc. No. 19. (No. 14, Petitioners' list.)
Paris Doc. No. 38 (No. 23, Petitioners' list.)

Rec. p. 106
" " 50
" " 109
" " 194 bottom
" " 107-108
" " 113
" " 110, 111

And the most liberal interpretation of all these loose scraps of rather questionable evidence will not warrant the Court in assuming more than that in 1751, and for four years after 1751, 1100 pickets were got out and a stockade fort built, some few, say from one-fourth of an acre to three or four acres, were cultivated (enough to give a prospect of from 30 to 35 bags of corn) and some six or eight head of cattle purchased and kept on the lands; but the whole abandoned by him and all claiming under him in or about 1755, (the date named in the petition) and ever since. De Bonne's moiety never having been entered.

To hold that merely entering upon the improvement of the land, and then ceasing to improve, satisfies the condition of the grant, would effectually nullify those considerations of public policy which prompted the grant in the first place.

From the sources of information supplied by the petitioners it would appear that the facts connected with the abandonment are probably as follows: All personal residence by either grantee ceased in 1755 at the latest.

Petition p. 6.

" " 12 bottom

During the French Government it appears that De Repentigny derived an income of 2,000 to 2,400 francs from the post (probably his salary as Governor.)

Paris Documents 21 and 29.

" " 111, 112.

Shortly previous to the 19th of May, 1762, the Freuch

"garrison [commanded by an officer who was called *Governor*, "but was in fact a clerk, who managed the Indian trade on "Government account,"] had been withdrawn.

Henry's Travels, p. 58.

"In the course of that season a small detachment of troops "under the command of Lieutenant Jemette, arrived to gar- "rison the fort."

Id. p. 61.

The officer who thus took De Repentigny's place was a British officer, and these were English troops.

Id. p. 67.

On the 22nd December, 1762, the post was burned.

Id. p. 63

And here all connection of De Repentigny with the seignory appears to terminate, the improvements being destroyed by fire, but not until after the English had actually assumed possession. There is no evidence whatever that the English Government ever paid any rent.

Whatever may have been done previous to 1755, all personal residence is admitted to have ceased in 1755. (Petition p. 6. amendment by petitioners, under stipulation 15th May, 1863.) and it was followed by conduct,

Paris Document, Nos. 60 and 63,
Paris Document No. 20, (Petitioners' list No. 12, being correspondence of Governor Murray).

Rec. p. 12 bottom
" " 344
" " 121

which it is submitted shows a deliberate intention on the part of De Repentigny to abandon the property and the country together, and a contemplation of it afterwards, and claim for credit with the French Crown, as "abandoned" *eo nomine*.

As to his successors, it is represented that this abandonment was persevered in by the successors of De Repentigny, and the adverse possession acquiesced in, upon the cool and deliberate calculation of "waiting until population should

"progress that way in order to draw from it a greater ad-
"vantage."

Paris Depositions, Du Fayel to 11th Cross Interrogatory.

Rec. p. 139 middle

"Of sooner or later taking possession of it."

Guadeloupe Depositions De Jonquiere to 9th Interrogatory.

" " 83

And the family law adviser states distinctly that "Louis," (who claims from A. D., 1786, to 1st May, A. D., 1820.) "being apathetic as to the management of his affairs left the "trouble of looking after this concession to his younger brother "Camille," (who claims, if at all, from A. D., 1786, to 1st April, A. D., 1820,) "who was not more diligent."

Guadeloupe Depositions L. Thionville to 5th ~~Cross~~ Interrogtory

" " 88

Detroit Do Exhibit 41 at end

" " 53

On the treaty of 1783, between Great Britain and the United States, the land, assuming it to have been once occupied, had then been for 28 years wholly unoccupied, and being thus vacant, and as it were derelict, in point of fact *hereditas jacens*, it had long previously reverted to the British Crown, who gave it up with the rest of Michigan to the United States, and who cannot at this distance of time, be presumed *in the absence of all proof* to have made an illegal entry.

But, even if not previously, it *then* reverted to the public domain of the United States by right of emminent domain *independently of the provisions of the grant*, and the United States, then going into actual possession by their servants and grantees, thereby gained the absolute property therein according to that rule of natural law. "*Quod nullius est, id ratione* "*naturali occupanti conceditur.*"

Bl. Com. II. 257.

See also Sir Wm. Blackstone's reasoning, supposing the Crown to have had a reversion.

Bl. Com. II. 259.

Again it is laid down "*Ubi non apparet dominus rei,* "*qnæ olim fuerunt inventoris, de jure naturali jam efficiuntur* "*principis de jure gentium.*"

Bracton Lib. 1. ch. 12 § 10.

Upon which Chancellor Kent observes: "It is a principle "which lies at the foundations of the right of property, that if "the ownership becomes vacant the right must necessarily "subside into the whole community."

Kent Com. IV. 425.

If it be urged that:

1stly. On general principles, no instrument can be rescinded but by another instrument or act of equal or greater solemnity. and that therefore,

2ndly. The doctrine of abandonment does not apply where claimant has title by grant.

It is replied:

1stly. Acts not under seal may avoid acts under seal and amount to an abandonment.

Cringan vs. Nicholson, 1 Hening and Mumford 429, and ca. ci.
Holmes vs. Railroad, 8 American Law Register, 716, 724.

Every owner of property, whether real or personal may abandon it.

Kinsman vs. Loomis, 11 Ohio 479.

A man shall be held to *intend* what necessarily results from his own acts.

Corning vs. Gould, 16 Wend 543.

Abandonment and non-claim for seven years was held sufficient.

Kirk vs. King, 3 Barr 436.

Whether there be an abandonment is a question of fact to be determined by circumstances of case.

Ward vs. Ward 14, Eng. Com. Law. and Eq. 414.

And when this is done the right is extinguished.

1 Brown's Civil and Adm. Law, 33, 166, 237 239, 240, 241
12 Ves. 264.

Where a person considered an article worthless, and cast it away, he thereby divests himself of his title, and cannot com-

plain if any other person takes possession of it. The fact of abandonment is sufficient.

Goon vs. Anthony, 11 Ill. 588.

A strong case of abandonment is that of

Taylor vs. Hampton, 4 M'Cord, 96, 102.
See also Hartford Bridge vs. East Hartford, 16 Conn. 149.
Wright vs. Freeman, 5 Johnson 467.
Pickett vs. Dowdell, 2 Wash. Rep. 115.

Leading decisions are:

Beckford vs. Wade, 17 Ves. 98 99.
Barry vs. Ringord, 1 Cox's Chan. Reports 145.
Bergen vs. Bennett, 1 Caines Cases 19.
Prevost vs. Gratz, 6 Wheat 481.

2ndly. The doctrine of abandonment distinctly applies to Government grants of lands with conditions subsequent. And *if the neglect of the conditions be unreasonable it amounts to evidence of abandonment*, especially "if the person seeking "to resume the ownership is actuated by some consideration "or expectation unconnected with the conditions of the grant "and which he had not in view when the land was granted.

Fuentes vs. United States, 22 How. 460.

It is submitted that the enhancement in value of the lands in the case at bar under the Government of the United States, would be just such a consideration unconnected with the conditions and wholly out of view when the land was granted.

Again, "if there were *any* unreasonable delay or *want* "*of effort* to fulfil the conditions it may justly be *presumed* "that the claimant had abandoned his claim before the Govern- "ment, from whom the United States derived, had ceased to "exist and is now endeavoring to resume his ownership after "the lands have become enhanced in value under the Govern- "ment of the United States."

Fremont vs. United States, 17 How. 555, 556, 561.

See also as to abandonment generally.

Ferris vs. Coover, 10 Cal. 589.
Davis vs. Butler, 6 Cal. 510.

Rec. p. 345

" " 122

The intention of De Repentigny to abandon is evident from

Paris Doc. 60, p. 2.

in which he claims credit with the French Minister, for "parting with property which he could only have preserved by "taking an oath of allegiance to a new master, a proceeding "which would hurt his feelings too severely."

Also Paris Document 63.

Both Documents use the very word "abandon," *eo nomine*, as applied to his self-expatriation.

So much for the United States title by abandonment; it would be enough if the United States had no other title, but in fact this is not a case of title by *mere* abandonment, it is one of abandonment, (in which irregularity or neglect of the solemnities necessary to revest the estate in the British crown *is not to be presumed*), of abandonment which, whether such irregularity or neglect is or is not presumed, has been accompanied by adverse possession by the United States, continued until the original grantee is barred by efflux of time.

See Preliminary Objections I, p. 7 supra.

2d. It reverted by feudal law and the Custom of Paris.

Precis of Petitioners case on this point.

The foundation of the whole edifice of the petitioners claim is shortly this:

Firstly, That by the feudal laws of Canada *no forfeiture could take place without the judgment of a peculiar Court.*

Secondly, That this judgment has never been obtained.

Thirdly, That until it shall be obtained they are entitled to the benefit of the grant of 1751.

It will be remembered by the Court that all the witnesses are silent who were examined and might be expected

to have spoken as to any excuse which existed for the desertion of the fief.

Guadeloupe Depositions generally in reply to 7th Cross Interrogatory, especially De Jonquiere.
Montreal Depositions (No. 1), 13th Cross Interrogatory and reply of Badgley, §§ 23, 28.

Also that, as to De Repentigny's part, personal residence is admitted by the petition to have ceased in 1755; he and all his representatives have been totally absent from the country since 1762; his absence was followed by conduct which showed a deliberate intention on his part of abandoning the property.

Paris Documents No's. 20, 60 and 63.

A line of conduct to which his successors adhered knowingly and deliberately, but whether from apathy or bad faith, or from both, for there is evidence of both, is immaterial; also that as to De Bonne's part personal residence or any other effort, except the incomplete act of hommage, to discharge the obligations on the grantee's part, never existed at all.

The petitioners assume, rather gratuitously, it must be observed, that no legal proceedings were ever taken by the British Government to obtain a Judicial Decree or Judgment of reunion or forfeiture; it is to be remarked by the way, that the records on which the proof of this depends were never at any time under the control of the United States.

On this assumption *alone*—after a century's absence by the grantee from the soil on which he could be sued, a century's repudiation of their duties, a century's abandonment of their rights, and a century's acquiescence in adverse possession.—On this assumption *alone* they found a claim for what? for *restitution* forsooth! they now wish to realize the result of the calculations, by which the inaction of some of the parties is now sought to be excused, and to reap the fruits of the exertions of others

Rec. p. 82 84 de
" " 151 middle
" " 219 bottom
" " 111, 345; 121

in promoting the settlement, developing the resources and increasing the value of the property during their absence; exertions to which though bound before and beyond all persons to contribute most, they have, of all persons, contributed the least; they have admittedly rendered the minimum of their duties, but then they are scrupulous! in asking for the maximum of their rights—*Summum jus* for them—*Summa injuria* for those on whom this Court may cast it.

It therefore becomes necessary to consider rather in detail,

Firstly, The essence and nature of the legal proceedings which are said to have been required and of the assumed neglect of which the petitioners now complain.

Secondly, The extent to which the petitioners have been damnified by such assumed neglect.

Thirdly, The obstacles *amounting to impossibility* which lay in the way of respondents, and those through whom they claim, in proceeding according to the strict *letter* of the law.

Fourthly, The steps actually taken by the Superior Domain, and whether they are not, in a Court of Equity such as this, under the circumstances sufficient.

The fief upon being deserted in 1755 became by the terms of the patent, as well as by the General Arret or law of 1743, liable to reunion or *de jure* reverted to the Crown. The petitioners urge that the United States, or those whom they represent, should have obtained a "Judgment of Reunion" under a certain arret or law of 1743, and that, this not having been done, they, the petitioners, are entitled to restitution.

Firstly and Secondly, what is the intrinsic value of such a judgment, considered as a solemn adjudication between litigants? we maintain that it was in fact nothing.

The operative power which in all such cases effected

the reunion *de facto* of the fief to the Superior Domain, was simply the WILL OF THE CROWN.

Edits I. 324—531. II. 132. I. 31, 74.

And the Intendant or Judge was merely the servant and deputy of the CROWN, holding office at the pleasure of the CROWN, and his judgments were merely public declarations of the Will of the CROWN (a Crown, be it remembered, which governed not by *laws* but by *Edicts*), and these judgments were subject to subsequent modification, according to the will of the CROWN.

Rec. P. 313, 314

See Seignl. Questions, vol. B, 5th and 6th series, p. 28 (b), et seq., p. 30 (b).
Edits III. 75. II. 560, and passim.

And for application of this see:

United States vs. Arredondo, 6 Pet. 714.

As to the Royal prerogative in this respect in Canada see

Seignl. Questions, vol. B. 4th, series, p. 42.

Thus at most nothing more than *a formal* declaration, [for the judgment was a matter of *form*, not of right.

Sherbrooke Depositions, Sanborn to 10th Cross Interrogatory, § 9.

" " 314 Do. 1099

to have been made *as a matter of course* at the instance of the CROWN, by officers holding office at the pleasure of the CROWN,] whose simple duty it was to declare the WILL OF THE CROWN, can be contended to have been necessary; the neglect of obtaining a declaration of this nature, if indeed it *was* neglected, is no very great blot upon a title commencing under the circumstances of breach of condition subsequent, abandonment and desertion already mentioned; a title sanctioned by a century's adverse possession; and even supposing the declaration never to have been obtained, a supposition which is by no means admitted, the petitioners cannot say that they are damnified to any material extent thereby.

The Court will bear in mind that it is not the United States but, the petitioners who are in the positions of plaintiffs in ejectment, *bound* to show that the minutest formalities requisite to confer a right to the possession which is in another party, have been complied with; this Court is besides on this occasion a Court of Equity, and it is enough for the respondents if, being in possession, they have in equity a good *holding* title.

The relative position of the parties before the Court is very important for another reason, because by the French law where rights, secured under a contract, have been forfeited by non-fulfilment of conditions therein, and the conditions are of such a nature that an offer of fulfilment cannot be made in the action to maintain such rights; the defendant has a right to plead forfeiture as a bar to the action, and ask to have the contract declared null.

Rec. p. 303 bottom

Sherbrooke Depositions, Sanborn to 6th Interrogatory, § 14.

It is not for the respondents to prove that the conditions were not complied with; the *onus* of proving that they were complied with lies on the petitioners.

" " 314

Sherbrooke Depositions, Sanborn to 10th Cross Interrogatory, § 8.

In the case of

Fuentes vs. United States, 12 How. 447.

Counsel for claimants urged precisely the same point as to the necessity for a judgment of this kind before any forfeiture for breach of conditions subsequent could take place, but the Court seems to have attached no weight whatever to the point, and to have decided against the claim—p. 460—on the ground that the claimants delay in performing the conditions amounted to *evidence of his abandonment.*

Thirdly, As to the impossibility of obtaining a judgment, it was just on De Repentigny's leaving the country in 1763, that the Court, officers and machinery,

Edits III, 573 (Art. 5).

necessary to give effect to the judicial proceedings alleged to be requisite to reunion of seigneuries *ceased to exist;* consequently the arrêts or laws relating to reunion, except that of 1732 which will be referred to below, and which required no particular officers or machinery to give it effect, became inoperative and though existing in theory did not exist in fact. See Montreal No 1 Depositions - Badgley to 13th direct Inty § 26 - Rec. p. 191 § 2 top

The arrêt of 1743 was in fact the only law under which proceedings for a reunion could have been instituted, the arret of 1732 (which never was repealed), not requiring proceedings under it in order to effect a reunion; but, as we have shown, proceedings under the arret of 1743 became absolutely *impossible* by reason of political changes, precisely at the same moment that the petitioners contend that they became necessary.

The impossibility lay in this, that even if, for the sole purpose of instituting these proceedings, Congress was willing to pass an act and organize a special tribunal; such a Court would not, and in the nature of things could not, be the *same*, nor even, consistently with the genius of the United States Constitution, a *similar* tribunal to that contemplated by the Royal declaration of 1743—as will appear by the commissions under which the judges—the Governor General and the Intendant—held,

Edits vol, III. p. 71.

it therefore would not be binding on the petitioners *without their consent*, but the petitioners have always resided out of the jurisdiction, (not in Canada but beyond the seas), and it has only been since the petitioners obtained their private act, 1860, and presented their petition that it has become POSSIBLE to obtain a judicial decision at all.

Fourthly, *As to the steps actually taken* and their sufficiency. But a judicial decision was in fact not necessary, for the mere fact of leaving the contry and becoming domiciled abroad, has been held in an analogous case to work

forfeiture *ipso facto*, without necessity for adjudication of forfeiture.

Bowmer vs. Hicks, 22 Texas, 155.

And besides the fact that the arrêt of 1732 never was repealed, and that this arrêt makes the forfeiture complete, *pleno jure* (de plein droit.)

Rec. p. 315 top

The Court will perceive that the title *accruing by the breach of condition* was *confirmed by voluntary abandonment* of the fief—(and as to De Repentigny's share by self-expatriation of the grantee.

See Bowmer vs. Hicks, 22 Texas, 155.)

and was *consummated by actual entry* on the part of the Superior Domain; in short as above shown, a declaration PRO FORMA (p. infra) of the *Will of the Crown*, see p. 41 *supra*, is the utmost that can be contended to have been necessary, and under the circumstances the Crown of England and the United States could take no more energetic or effectual steps to declare their *Sovereign Will*, than by making actual entry; this they did, for

" " 111, 112

The post, which prior to 1762 had been in the hands of the French government, and producing an indirect profit by way of salary to De Repentigny, as is stated by petitioners.

Paris Documents, 21, 29,

was, in 1762, according to Henry, occupied by English troops.

Henry's Travels, p. 61,

and there is no evidence of any portion of the property having since then produced rent to any one, or been occupied otherwise than by the United States and their grantees, or by squatters who admit the paramount title of the United States.

This would appear even *in strict law* sufficient to complete their title without any judicial proceedings for, by the fundamental principles of French feudal law, even

in cases of Escheat the Lord might either *actually enter* or bring a writ of Escheat.

Bl. Com. II. 245.
Stevenson and wife vs. Dunlap's heirs, 7 T. B. Monroe 134.
Fry vs. Smith 2 Dana, 238.
White vs. White, 2 Met. Ky. p. 185.

Further an absolute and incurable forfeiture could take place, *without judgment of forfeiture* and the Seignory pass into the possession of the Crown, and so being in the possession of the Crown it could not be claimed back.

Sherbrooke Depositions, Sanborn to 6th Inerrog. § § 21, 14.

Rec. p. 304. bottom
305 "

Further, two of the Canadian Judges (Smith & Monk) distinctly state in reply to *precis* of 6th Cross Interrogatory at end § "3dly" that the absence of a record of such judgment or "office found" could be cured or [their existence now] rendered presumable by the lapse of time and other circumstances of the case.

Montreal Depositions No 2. 6th Cross Interrogatory at end § "3dly" and replies.

" " 272 top

That this is not a clerical error, will be apparent from an inspection of the erasures at this part of the original depositions.

Further, if the formality of a *judgment* is considered necessary, we respectfully call upon the court to pronounce it NOW and for ever; the arret of 1743 (art. III.) enacts, that a "re-union may be AT ALL TIMES decreed against the original grantees;" why should it NOT *now* be decreed? The petitioners claim to represent fully the original grantees, they have by their own act done that which it was impossible for the United States to do, and have now for the first time within a century placed themselves within the reach of a court fully empowered to decree this particular reunion. It is submitted that the breach of the conditions subsequent is at least as palpable and flagrant now, as in 1763, and that it has been such as to render it imperative on the Court now, to pronounce this decree which the respondents

are now for the first time, since the state of facts arose, in a position to demand from a competent court of justice.

The Court in adjudicating "according to the laws of the country from which this title was derived," has power to make this decree without any substantive suit or pleading in the nature of a cross bill for the purpose.

Sherbrooke Depositions, Sanborn to 6th Interrogatory § 14.

Rec. p. 303 bottom
" " 305 "
" " 314

A judgment of reunion is matter of FORM not right, and may be pronounced now as well as any other time.

Sherbrooke Depositions, Sanborn to 10th Cross Interrogatory § 9.

And further as to De Bonne's share, besides the arrêts of 1732 aud 1743 enjoining improvement, there was also in force that part of the arrêt of 1732, whereby any attempt to sell wooded lands, such as these then and now are, absolutely re-united the fief by operation of law to the superior Domain, so as that De Bonne's share in A. D. 1796, and A. D. 1798 upon his and Caldwell's attempts to sell it *ipso facto* stood re-united *pleno jure*, (*demeurait réunie de plein droit*) by that sale *de facto* as well as *de jure* without any special judicial decree being necessary

in like manner re-united—*de pleno jure* * * * in virtue of the present decree, and without there being need of another.	*pareillement* reunie de plain droit * * * en vertu du present arrêt, et sans qu'il *en* soit besoin d'autre.

Arrêt 1732 last § Edits III. 531.

NOTE.—*Arrêt*—means the judgment or decision of a court of justice in its primary and general signification.

Spier's Dictionary.

And further, as to De Repentigny's share, it is claimed

through one who contrary to the first principles of feudal law

Kent Com. III. 495.
Pothier Traité des Fiefs. part I. Ch prelim § 1—3.

refused military service when expressly summoned through his eldest brother to serve in a suitable and honorable capacity by the express and urgent written requisition of his feudal superior (Gov. Murray the representative of his Sovereign)

Paris Doc. Nos. 20. 33 and 60. (No. 12, 27 and 56 Petr's List
Guadeloupe Depositions L. Thionville to 7th Cross Interrog·

proposing to him to continue his connection with his native country, although it had passed into the hands of another power and offering him a superior grade in the British service, and in defiance thereof he embraced a foreign military service, and continued in the same to his death, an absentee from the seignory and from the realm. But as stated above the mere fact of leaving the country and becoming domiciled abroad has in a very similar case been held to work forfeiture *ipso facto* without necessity for adjudication of forfeiture.

Bowmer vs. Hicks 22 Texas 155.

He thus repudiated the most fundamental of his feuda duties—yet his representatives now append their claim to the extremest *fragment* of his feudal rights.

It is evident

1stly. That the offer made to the elder brother was made and rejected not for himself only, but for the younger brother as well, "in order to retain *us* in his service" (pour *nous* retenir á son service.)

Paris Doc. 60. and

2dly, That the younger brother abandoned his property deliberately *eo nomine* "*abandon*."

Paris Doc. 63 foot of page 1.
60. middle p. 2.

Rec. p. 111, 102 bottom 344
" " 91 -
" " 345 - mid
" " 122 top
" " 345 - mid

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" " 305 "
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Guadeloupe Depositions L. Thionville to 7th Cross Interrog·

Rec. p. 111, 102 bottom 344
" " 91-

proposing to him to continue his connection with his native country, although it had passed into the hands of another power and offering him a superior grade in the British service, and in defiance thereof he embraced a foreign military service, and continued in the same to his death, an absentee from the seignory and from the realm. But as stated above the mere fact of leaving the country and becoming domiciled abroad has in a very similar case been held to work forfeiture *ipso facto* without necessity for adjudication of forfeiture.

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" " 345 - mid

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Paris Doc. 63 foot of page 1.
60. middle p. 2.

" " 122 top
" " 345 mid

3dly. That in doing so *his* interpretation of the Treaty of 1763, was obviously that if he did not take the oath of allegiance to the King of England, he would absolutely and altogether lose his property, "which I could not preserve but by an oath," etc., (*que je ne pouvais conserver que par un serment, etc.*)

Paris Doc. 60—foot of page 1.

Rec. p. 345

Supposing that the King of France were himself
be the judge in this case he would have to decide
between De Repentigny and himself, but between De
pentigny and strangers, quasi purchasers from himself,
whom De Repentigny had rendered no services,
whom he had made no sacrifices, and on whose consi
ration he could have no claim beyond that which a s
stantial performance of his part of the contract co
command; the king would thus as judge be bound
conscience to ignore altogether De Repentigny's cla
upon himself for his services and his sacrifices; the s
vices were the foundation of a fair claim upon the King
personal honor, but they were rendered after the da
of the grant, and could not attach upon the lands
the hands of the powers who succeeded the King
France in the government of the country, the sacrific
were quite unnecessary and uncalled for and, judgin
from the correspondence ending in the Senegal catastroph
do not seem to have been very highly appreciated eve
by the King of France.

Paris Documents, 33, 56, 62, 63, 64, 23, 24, 67, 68, 70, 25.

Rec. pp. 102 bottom
120 bis - 121 - 122 - 123 ter
124 bis - 38 A p. 73

3rd. But the Seigneury reverted by Escheat and actual entry, for as just stated, he repudiated the allegiance imposed on him by the well established rule of public law in such cases, viz.: that "in such political changes "the people change their allegiance, and their relation to "their ancient sovereign is dissolved."

U. S. vs. Percheman, 7 Pet. 87.

Kent Com. IV, 424, & ca ci

He deliberately declined, through his elder brother, the requirements of the British Governor General,

Paris Doc. Nos. 20. 33 and 60.

preferred French allegiance and French military service, does not appear to have even in form become a British subject, or complied with the 4th article of the treaty of 1763, (which was an *enabling* instrument in regard to the sales it contemplated,)

(*See Copy, Appendix below* R.)

by selling his estate to a British subject, and thus he must be considered to all intents and purposes an alien, and one who thus abandoned to the British Crown his real property which vested in the Crown, without the necessity for any judgment, by the treaty stipulation of 1763

Sherbrooke Depositions, Sanborn to 12th Cross Interrog. § 15.

It is abundantly evident from the testimony adduced by the petitioners themselves, that his descendants trod in his steps

Guadeloupe Depositions L. Thionville to 7th Cross Interrog.
Paris Depositions Du Fayel to 11th Cross Interrogatory.
" " " Violet to 5th and 7th Cross Interrogatory.

and were by birth and otherwise to all intents and purposes aliens, they were thus under the laws of Canada between 1763 and 1783, incapable of devising and taking by devise as well as of inheriting, if not also of *holding*, land

Donegani vs. Donegani, Stuart's Reports (Canada) 460. 605.
Pacquet vs. Gaspard, Id. 143.

now, in cases of Escheat as above stated p 65 the Lord might either actually enter or bring his writ of Escheat,

Bl. Com. II. 245.

and the title vests and is complete without office found.

White vs. White, 2 Met. Ky. p. 185.

M Hill vs Conklin 2 Hill 67

Res. p. 111 bottom
119 (102 bottom)
344

" " 307, 308 mid
315 bottom
316 p. 1105

Kent Com. IV, 424, & ca e'

Stevenson and wife vs. Dunlap's heirs, 7 T. B. Monroe 134.
Fry vs. Smith, 2 Dana, 238.
Sanborn to Interrog. No. 7. (7thly) and to 12th Cross Interrogatory.

Rec. p. 307, 316, fo 1105

As above stated, De Repentigny's *own* interpretation of the Treaty of 1763 was that, if he did not take the oath of allegiance to the King of England, he would absolutely and altogether lose his property, and that he had actually lost it, because he would not take the oath.

" " 345, 122, top

Paris Doc. 60. -63

But further, the title lost by laches is by the rules of equity transferred to the Crown which in the case at bar has the double right of Escheator and Reversioner. In the case of

Cholmondely vs. Clinton, 2 Jac. and W. 256.

in which the Crown was an absolute stranger, the Court ~~The Court~~ says, "as to the argument that though the "title may be lost by laches it cannot be transferred "without the act of the party. If the negligent owner "has for ever forfeited by his laches his right to any "remedy to recover, he has in effect lost his title for "ever. What then is to become of the title, is it to "become an *hereditas jacens* belonging to no one? Is it to "devolve on the Crown, or to pass by escheat? The "defendant" (who in the case cited did not in any respect represent the Crown), "keeps possession without "the possibility of being ever disturbed by any one "The loss of the former owner is necessarily his gain— "it is more, he gains a positive title under the statute "at law, and by analogy in equity, in Taylors vs. Horde, 1 "Burrow 119. Lord Mansfield says, 'Twenty years possession is a *positive* title to the Defendant. It is not a bar "to the action or remedy of the plaintiff only, but takes "away his right of possession.'"

4th. The petitioners claim the benefit of the treaties of the 19th Nov. 1794, art. IX. between England and the

U. S., and of 1778 art. XI., and 1800 art. VII between France and the United States.

The benefit of the treaty of 1794 is restricted to "*British subjects*" who "then *held*" lands in the territories of the United States; but as regards the De Repentigny share; the person then representing petitioners was a French subject, and took very particular care never to become a "*British subject.*"

Vide supra Point. IX. § 3, p. 48.

And as has been shown above (Point. I.) cannot be said to have "*held*" the lands in any sense of the word.

Neither De Bonne nor any of his representatives ever had actual seizin; they also attempted to sell in such a manner as to forfeit *ipso facto* any rights they may have had, as has been shown, consequently, even if British subjects, they could not be said to "hold" the lands. The treaty merely removes the disabilities of aliens *in prospectu*—it had no *ex post facto* operation whatever.

As to De Repentigny's rights under the French treaties of 1778 and 1800, these treaties provide merely that alienage shall be no bar to the transmission of existing interests in land *held* (1800); but they do not extend further, and they had no *ex post facto* operation whatever.

X.

SUPPOSING THE ENTRY OF THE BRITISH CROWN OR OF THE UNITED STATES TO HAVE BEEN IN POINT OF LAW INFORMAL, STILL THE PETITIONERS CAN HAVE NO RELIEF IN EQUITY, FOR

1st it is Great Britain and not the United States to whom, if to any one, the petitioners are to look for compensation.

The petitioners claim restitution, because as they allege the right of property in the French inhabitants of Canada, was guaranteed by the Crown of Great Britain in the pre-

liminary treaty of 3d Nov. 1762, and also in the definitive treaty of 1763, whereby Great Britain in fact assumed the obligation of guaranteeing the private property of French subjects.

The petitioners had their opportunity from 1763 until 1783 to get this grant affirmed by the granting officers of the British Crown, how did they use this opportunity?

If the premises on the U. S. side of the line were in their actual possession, and the location of the grant distinctly established by land marks, standing thus acknowledged by Great Britain as private property at the time that the United States succeeded to the sovereignty, it would perhaps be a fair foundation for a claim; but the fact is, that they neglected this opportunity; the only evidence we have of of its occupation during that period from Henry and others amounts to that of its use *by Government* as a post partly military, partly trading on Government account, but a post which was in all respects *public property*.

Henry's Travels p. 58.

The petitioners, or those under whom they derive, thus allowed the claim to remain ineffective and unsatisfied during the whole period of British rule, and it was not in any manner brought to the attention of the United States Government for half a century at least after it assumed the sovereignty. It is therefore *to Great Britain alone* that the petitioners must look; they have no remedy against the United States, for the United States have never admitted that they derived any thing by cession from Great Britain, if however, the United States are purchasers at all, they are purchasers for value without notice, and there is no provision in the British treaties of 1783 or 1795, nor any principle of public law by which the United States Government is required to redeem the obligations of *Great Britain to France*, growing out of the condition of things in the territory in question, when

the treaties of 1762, 1763 were ratified between those powers. This proposition is distinctly recognized.

Act of Congress 26 May 1830, c. 106, sec. 3, United Statutes at large, vol. IV, p. 405.
Report on British claims found in American State papers, Public Lands, vol. IV. p. 154.

NOTE.—The Floridas passed from Great Britain to Spain by treaty of 1783, which contains a precisely similar provision to that of the French treaty of 1763, enabling British subjects to sell within eighteen months. The Floridas further passed from Spain to the United States by subsequent treaty in 1819, and the U. States sent Commissioners to adjudicate on claims under British grants resembling that of De Repentigny in the case at bar; but the Commissioners decided against the claim, on the ground, that it should have been preferred to the Spanish government, and for want of compliance with the enabling clause in Treaty 1783, Art. 5.

See also White's New Recopilacion, vol. II. p. 296 to 303 incl.

2d. The petitioners can have no relief in equity, because the conditions of the grant must be performed.

Winter v. United States, 1 Hemp. 344.
United States vs. Kingsley, 12 Pet. 486,

in which last case the Supreme Court says, "the fact that no case known of land having reverted to the class of public lands for non-performance of the condition does not prove a custom, unless a current of cases is shown in which claimants have held the land without performance"; and further, the petitioners have no relief in equity because of their laches and acquiescence in the adverse possession of the United States, acquiescence accompanied perhaps by a secret intention of allowing their *descendants* in subsequent generations to prosecute the claim, but even if so such "waiting until the tide of population should progress "that way, in order to draw from it a greater advan- "tage, &c.," as stated supra pp. 34, 35, was a mere FRAUDULENT scheme for reaping the fruits of other men's labors, and one which this Court cannot sanction after a century's adverse possession. This laches is abundantly evident

from the petition itself; as to that of Gaspard, Louis Jr., Camille, and the widow of Camille De Repentigny.

See also

Guadeloupe Depositions De Jonquiére to 9th Interrogatory.
" " L. Thionville to 5th Interrogatory.
" " Violet to 5th Cross Interrogatory.
Paris Depositions, Du Fayel, to 11th Cross Interrogatory.
Detroit Depositions, Favarger's Exhibit No. 41, being Gaspard's memorandum about Caldwell's offer, at end.

Rec p 83
" " 88
" " 143
" " 139
" " 53
" " 334 to 1167

as to that of De Bonne's representatives

See Will of John Gray Slacke, p. 6 att'd. copy.

NOTE.—He apprehends that Congress may annex conditions of settlement if it allows his claim.

De Bonne's Representatives, it is true, brought their own claim frequently before Congress, but it was brought forward in an imperfect manner, and remarks were made upon the De Repentigny share not being represented.

But the De Repentigny share was not so represented, perfectly or imperfectly.

3d. The petitioners can have no relief in equity because the substantial consideration which induced the Superior Domain to make the grant has been withheld.

This is the grand question—

United States vs. Castillero, 2 Black 351.

Before being declared entitled to the lands or to compensation, the petitioners in the position in which they stand, suitors in equity resembling plaintiffs in an action of ejectment, are bound to show that they have not only a dry legal title but also a morally equitable case, in fact that they have done nothing and omitted nothing by which such right or claim has been impaired, but what are the facts?

The services, military or civil, rendered by De Bonne previous to the grant, were absolutely nil.

The services of De Repentigny were prospective and not past.

See grants, 1750—1751,

Rec. p 4. 6.

civil rather than military.

Correspondence as to Cross of St. Louis, Paris Doc. No. 19 (14 petitioners list). " " 113

Detroit Depositions, Favarger's Exhibit No. 38 (No. 8 in petitioners list). " " 50

Henry's Travels, p. 58 et seq.

Letter from Gov. DuQuesne, No. 9 of petitioners list. " " 109

and it is quite plain from the official correspondence,

Correspondence prior to confirmation, Paris Doc. 93 and 94, No. 3 (a) in list, and No 52 in Do " " 106. 129

as well as from the terms of the grants that the policy of the Crown of France in making the grant, was for the purposes of settlement and inhabitation, and not for the purpose of rewarding past services by supplying its servant with the means of speculation. Accordingly we find that the improvement (mettre en valeur) of the land was specially and distinctly stipulated for—so specially that on comparing the provincial grant of 1750 with the Royal Confirmation of 1751, we shall see that it was in fact a provision superadded by the King of France to the other provisions, contained in the provincial grant; all reference to the destruction of the English trade, though dwelt on in the grant, is omitted in the ratification; this omission was plainly *ex industria;* and as involving the public benefit, the clearing and cultivation as distinguished from political services, was obviously

Paris Doc. 93 and 94 (No. ~~3-a~~ 52 and 3-a, petitioners list). " " 129. 106

Detroit Depositions, Favarger's Exhibit (No. 38, No. 8 in petitioners list). " " 50

Edits I. 334, 531, 572. I. 32.

the substantial consideration which moved the King to make the grant as in the case of

The United States vs. Boisdoré, 11 How. 96.

Now, conditions of this kind must be performed.

Glenn vs. United States, 1 Hemp. 394.
Winter vs. United States, 1 Hemp. 344.

otherwise a current of cases must be shown in which the claimants have held without performance.

United States vs. Kingsley, 12 Pet. 486.

But this consideration has been wholly withheld from, and the burden of improvement thrown on the Superior Domain by the petitioners and their predecessors, so far as in them lay, ever since 1762 at latest, we have seen p. 33 what had been done previous to that date; since that date, there has been nothing on which to found an allegation of performance, even *cy près*, nothing *whatever* has been done.

At this period, 1762, as to De Repentigny, who alone has the *shadow* of a claim, two courses, obviously incompatible with each other, lay before him; he might have become a British subject but he preferred a French allegiance. He was personally solicited by the Governor General to accept a majority in the British army, but he preferred the equivalent grade of Colonel in the French army. The Governor General reminded him of his existing interests in Canada, but he preferred to establish his family in Guadeloupe, and to reign himself as viceroy of Senegal. In short, he might have maintained his title to this property by continuing to reside in the country, and substantially performing the conditions attached to the grant, so as to render it binding in moral equity upon the conscience of the Superior Domain, but being a military man with a natural view to promotion, he preferred to seek the favor and to strengthen his claim upon the personal honor of the King of France. He made his election, perhaps so far as he was personally concerned very wisely, certainly very deliberately and very explicitly. His successors, during four successive generations, covering a period of fifty-five years, from 1786 to 1841, when they first petitioned

Congress, have with equal deliberation and openness ratified his election, and they were all, be it remarked, including the original grantee during his whole life, free from any limitation of their estate by family settlement or otherwise, and *competent to bind the inheritance.*

Thus they have not in good faith, in fact they have not AT ALL, fulfilled the essential conditions of the grant; the substance of the consideration has been withheld; rigidly and technically correct proceedings for forfeiture on breach of condition were not necessary, actual resumption was a sufficient substitute for such proceedings. And if they were *prima facie* necessary, they were not possible for several reasons, all of which were out of the power of the United States to remove, and their absence has been satisfactorily accounted for; what then is the equity of the petitioners? the *non*-fulfilment of the conditions of the grant—a completely novel one. Those who have thus withheld the consideration are the same parties who now claim the benefit without having discharged the obligations of the grant, and the first principles of natural and moral right call upon a Court of Equity, as this is in the present case, to suspend a benefit which, it is manifest, was not intended to flow under such circumstances as the case presents.

The case of

The United States vs. Arredondo,

may be relied on here by the petitioners, but that case only goes so far as to declare a grant discharged of conditions when their performance becomes *impossible by the act of the grantor*, but that is not the case here; there was no necessity whatever for either De Repentigny or De Bonne or their successors neglecting the performance of the conditions; the true reason appears from the evidence.

See foot of p. 34, *supra*, and references p. 58 at top.

to have been that they calculated coolly that, under the

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United States vs. Kingsley, 12 Pet. 486.

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to have been that they calculated coolly that, under the

rule of the United States and by the energy and enterprize of its citizens, it would be more profitable to await as absentees the development of the resources of the estate, and instead of settling at considerable personal inconvenience and expense, they calculated upon selling without any inconvenience and at considerable personal profit; true, they risked something, but is was *only* the risk of this Court ascertaining and appreciating these facts.

XI.

AS TO THE NATURE OF THE INQUIRY INTO TITLE, NECESSARY IN THIS CASE.

The Court has to try the validity of the petitioners title.

What is a title?

Blackstone gives Coke's definition (II. 195): *Titulus est justa causa possidendi id quod nostrum est.* And discusses the question of what constitutes *perfect title* under three heads:

1st. Mere possession.
2d. Right of possession.
3d. Mere right of property. *Jus merum.*

This last is all the petitioners pretend to, after so long an acquiescence, and this being so they "must be strictly "held to the proof of it in order to recover."

Bl. Com. II. 198.

But even this right of property is "without remedy" after the time has run out, limited by the statutes of Michigan, by the analogous rules of equity proper, and by the 118th Art. of the Custom of Paris, which last destroys the right as well as bars the remedy,

Badgley to last Interrogatory, 7thly, § 76,

Rec. p. 207 fo 751

Therefore ALL the elements of a valid title are wanting in the petitioners' case.

Still, waiving the benefit of efflux of time (if the Court shall hold the United States bound, under act of 1860, to waive it), we have shown the petitioners to stand here in a Court of Equity without MERITS, as well as without strict rights.

Rec. p. 209 to 757

If it be contended by petitioners that Congress, in passing the Private Act of 1860, precluded itself from requiring the petitioners to prove more than the validity of the title at the time of its emanation, and that they are the legal and full representatives of the original grantee.

It is replied: (present)

1st. From the private act it is plain that it is "the validity "of the title" and "validity of the GRANT" which is to be inquired into, and not merely the validity of the title deed or grant at the time of its emanation, nor of that PART of their title which may be called the *derivative title.* In other words it is their whole title, for there is nothing in the act to restrict its meaning to anything less than the whole. This is evident from the direction of the Court to be governed by the principles of the Missouri Lands Act, 26th May, 1824, which has been repeatedly construed by the Supreme Court in the way we claim.

U. S. vs Glenn, 13 How. 257 et. seq.

2nd. The Missouri Lands Act, thus referred to, is by its very title, an act to try the validity of claims (or titles, Sec. 1) and the Court has full power (Sec. 2.) to hear ALL questions relating to the title, the extent, locality and boundaries of the claim, and to settle the validity of the title according to the laws of nations, stipulations of treaties, &c., and referring to the numerous cases adjudicated under it, it will be found that the *whole* title was passed on by the Court.

See ca. ci. *Supra* VIII. pp. 30, 31, 32.

3rd. The report of Mr. Felch shows that all consideration of the "numerous questions arising on the conditions with "which the grant is burdened" was left untouched by the

Committee on the Bill of 1860. This was obviously with the intention of their being adjudicated on elsewhere, and if not *here*, where else?

What are the questions involved in the inquiry into the "validity" of a claim to land? under the Florida Act, which

U. S. vs. Arredondo, 6 Pet. 707.

was framed upon the same model as the Private Act of 1860, it was, among other questions, considered especially "*whether* "*the land had been forfeited for breach of condition*," in fact, every possible part of the title was passed upon *except* perhaps the derivative title.

United States vs. Fossat, 21 How. 449.
United States vs. Arredondo 6 Pet. 710,
Glenn vs. U. S., 13 How. 257, et seq.

Note—The Arredondo case contains a full disquisition on the Missouri Act, supplying instructions to the Court in the present case most explicitly.

The petitioner's claims, had prior to the act of 1860, been considered by Committees of the House and Senate.

All these reports were adverse on the very grounds we now urge to the Court.

Each Committee had before it the grant and its confirmation, and if these solely constituted *a valid title* there was no necessity to refer the matter to this Court.

The Committee of 1858 (Benjamin's) say they are satisfied of the authenticity of the titles and of *their* legal validity, but nevertheless they recommend the passing of the Private Act, (of 1860)—for what reason? in consequence of Judge Felch's report, which impugns the whole title.

The words "validity" and "title" are not qualified in any way, and must be taken to mean the *continuing validity* and the *entire title*. It is thus on the whole obvious that all questions of title, including defeasance and every thing which could avoid a title once good, are to be passed upon by the Court.

On this see especially Senator Breese's report 10th August, 1846, rejecting the claim for the present as uncertain whether title *valid at this time* as against the Government.

XII.

AS TO EVIDENCE OF ANCIENT FRENCH FEUDAL LAW.

The opinions of the Canadian experts are not binding upon the Court as evidence, nor is weight to be attached to them by reason of a preponderance *in number* of witnesses on either side.

French laws prevailing in Canada before the relinquishment of the *locus in quo* to the United States, and affecting the title, must be judically noticed by the Court, the existence and nature of such is not matter of fact to be proved.

U. S. vs. Turner, 11 Howard 664.
2 Phillips Ev. (4th Edition by Edwards) p 429, note and ca. ci.
viz.: Arrayo vs. Currell, 1 Mill. Lou, 528, 541.
Malpica, vs McKown Id. 254, 255 and 256.
Fremont vs. U. S., 17 How. 557.

XIII.

AS TO FINES.

But if the Court should in all points think differently, there are at least large money fines, due to the superior domain and in respect of these no account has yet been taken, no tender made, nor any sum lodged in Court.

XIV.

RECAPITULATION.

In conclusion it is respectfully submitted, that laying out of view the numerous minor matters of defence which have been adverted to in detail, there are six principal objections which cannot be got over by the petitioners, or adjudicated in their favor by the Court in deciding according to the principles of justice and the requirements of the act of 1824.

1st. The vagueness of the calls in the grant, rendering it utterly incapable of identification, so that it was never severed from the royal domain, and the Court has no power to render a decree.

2nd. The very great lapse of time aside from any statute of limitations.

3d. As to the De Bonne moiety of the claim, the total absence of all effort to perform the conditions subsequent, together with illegal sales, which involved forfeiture *ipso facto*.

4th. As to the De Repentigny moiety. The utterly insufficient attempt at performance of conditions subsequent, the deliberate abandonment of the seignory, the repudiation of the enabling provisions of the treaty of 1763, and alienage to 1778.

5th. Resumption by the Crown of both moieties of the grant accordingly, and continuous possession ever since by the British Crown and the United States.

6th. The non-liability by the United States to the claim (without prejudice as to its being good as against Great Britain,) by analogy to the Florida claims.

Wherefore the petition should be dismissed with costs.

ALFRED RUSSELL,
Attorney of the United States for the Eastern District of Michigan.

APPENDIX.

A.

PROVINCIAL GRANT.

Du 18. Octobre 1750.

LE MARQUIS DE LA JONQUIERE &c.—FRANCOIS BIGOT &c.

Vu la requeste à nous presentée par Messrs. de Bonne Capitaine reformè dans le régiment de Condé infanterie et le Chevalier de Repentigny, enseigne dans les troupes de ce pays, contenant que dans le dessein où ils sont d'établir une seigneurie ils ont jetté les yeux sur l'endroit nommé le Sault Ste. Marie; que des établissements dans ce lieu seraient d'autant plus utiles que les voyageurs des postes voisins et ceux de la mer d'ouest y trouveraient une rétraite assurée et par les soins et précautions que les supplians se proposent de prendre ils détruiro'ent dans ces quartiers le commerce des sauvages avec l'Anglais: — Pourquoi ils nous supplient de leur accorder la concession du dit Sault Ste. Marie: avec six lieues de front sur le portage sur six lieues de profondeur, bordant la rivière qui sépare les deux lacs.—A quoi ayant égard, nous, en vertu du pouvoir à nous conjointement donné par sa Majesté, avons accordé et concédé, accordons et concédons par ces présentes aux Srs. de Bonne et Chevalier de Repentigny le dit Sault Ste. Marie, avec six lieues de front sur six lieues de profondeur, bordant la rivière qui sèpare les deux lacs. Pour en jouir par les dits Srs. de Bonne et Repentigny, leurs hoirs et ayants cause à perpetuité a titre de fief et seigneurie, haute moyenne et basse justice, avec droit de pêche et chasse, seulement dans toute l'étendue de la dite concession, à la charge de porter foi et hommage au château St. Louis de Quebec; du quel its relèveront aux droits

et redevances accoutumés suivant la coutume de Paris suivie en ce pays; de conserver et faire conserver par leurs tenanciers les bois de chesne propres pour la construction des vaisseaux du Roy; de donner avis à sa Majesté des mines, minières et minéraux si aucunes se trouvent dans l'étendue de la dite concession; que les appellations du juge qui y sera etabli sortiront en la justice Royale de Montreal; d'y tenir feu et lieu, et le faire tenir par leurs tenanciers, de déserter et faire déserter la dite terre, à faute de quoi, la presente concession sera et demeurera nulle; laisser les chemins du Roy et autres jugès necessaires pour l'utilité publique, et de faire inserer pareilles conditions dans les concessions qu'ils feront à leurs tenanciers, aux cens rentes et redevances accoutumés par arpent de terre de front sur quarante de profondeur; laisser les grèves libres à tous pêcheurs à l'exception de celles dont its auront besoin pour leur pêche, et en cas que sa Majesté ait besoin dans la suite d'aucune partie du dit terrain pour y faire construire des forts, batteries, place d'armes, magazins et autres ouvrages publics, sa Majesté pourra les prendre aussi bien que les arbres nécessaires pour les dits ouvrages et les bois de chauffage pour la garnison des forts, sans être tenue à aucun dédommagement: — Reservons pareillement au nom de sa Majesté la liberté de prendre sur la dite concession les bois de chesne, mâture et généralement tous les bois qui seront propres pour la construction et armement de ses vaisseaux, sans être également tenue à aucune indemnité, le tout sous le bon plaisir de sa Majesté, de laquelle ils seront tenus de prendre confirmation des présentes dans l'an. En temoin de quoi etc.

(signé) LAJONQUIÈRE ET BIGOT.

(Contresigné et cacheté)—BIGOT.

TRANSLATION.

Of the 17th of October, 1750:

"THE MARQUIS DE LA JONQUIERE, ETC., FRANÇOIS BIGOT, ETC.

"Having seen and examined the petition presented to us by Messrs. De Bonne, a half-pay Captain in the Condè regiment

of infantry, and the Chevalier De Repentigny, an Ensign in the troops of this country, setting forth that, while entertaining the purpose of establishing a seignory, they have cast their eyes upon a place called (nommè) the Sault Ste Marie, that settlements in that place would be more useful as voyageurs from the neighboring posts and those from the Western sea would there find a safe retreat, and by the care and precautions which the petitioners propose to take, would destroy in those parts the trade of the Indians with the English: THEREFORE, they petition us to grant and award to them the concession of the Sault Ste Marie, with six leagues of front upon the portage by six leagues in depth, bordering the river which separates the two lakes: WHERETO having regard, we, in virtue of the power given us conjointly by his Majesty, have awarded and conceded to the said Sieurs DeBonne, and Chevalier Repentigny, the said Sault Ste Marie, with six leagues of front by six leagues in depth, bordering the river which separates the two lakes.

To be enjoyed by the said Sieurs De Bonne and Repentigny, their heirs and assigns in perpetuity, *by title of fief and seigniory*, (*à titre de fief et seigneurie*,) *haute moyenne et basse justice*, with the right of fishery and hunting only within the whole extent of the said concession; upon condition of bearing faith and homage at the Castle of St. Louis of Quebec, of which they shall *hold* said lands upon the customary rights and serviess *according to the coutume de Paris* followed in this country; of preserving, and causing to be preserved by their tenants, the oak trees fit for constructing the King's ships; of notifying his Majesty of any mines and minerals, if any shall be found within the said concession; that all appeals from the judge who shall reside there shall be to the Royal Court of Montreal; to hold and possess the same by themselves, and to cause the same to be held and possessed by their tenants, and to clear and cause to be cleared the said land, in default whereof, the present concession shall be, and shall remain

null; they shall also permit the King's roads and others judged necessary for the public utility, and cause to be inserted the like conditions in the concessions which they shall make to their tenants, for quit-rents, rents, and the customary services by the arpent front of land by forty in depth; shall leave the shores free to all fishermen, with the exception of those which they shall have need of for their own fisheries, and in case his Majesty shall hereafter have need of any part of the said land to erect thereon forts, batteries, arsenals, magazines, and other public works, his Majesty may take it as well as the trees necessary for the said works, and fire-wood for the garrison of the fort, without being held to any indemnity; and, we reserve also, in the name of his Majesty, the liberty of taking upon the said concession the oak timber, spars, and, generally, all the wood which shall be proper for the construction and armament of his ships, without being held to any indemnity, all at the good pleasure of his Majesty, whose confirmation of these presents they shall be bound to procure within a year."

" (Signed,) LAJONQUIERE ET BIGOT.
" (Countersigned and sealed,) BIGOT."

B.

ROYAL CONFIRMATION.

Brevet de ratification de Concession pour les Sieurs de Bonne et Repentigny.

Aujourd'hui, vingt-quatre Juin mil sept-cent-cinquante-un Le Roy étant à Versailles voulant confirmer et ratifier une concession faite le dix-huit Octobre mil sept-cent-cinquante par les Srs. Marquis de la Jonquière, Gouverneur Lieutenant Général en la nouvelle France, et Bigot, Intendant au dit pays aux Srs. de Bonne, capitaine reformé dans la Regiment de

Condé Infanterie, et Chevalier de Repentigny, Enseigne dans les troupes de Canada, du lieu nommé le Sault Ste. Marie avec six lieues de front sur le portage, sur six lieues de profondeur bordant la rivière qui sépare les deux lacs, Sa Majeste a ratifié et confirmé la dite concession. Veut en conséquence que les dits Srs. de Bonne et Repentigny leurs héritiers ou ayant cause jouissent à perpétuité comme de leurs propres de la dite terre à titre de fief et seigneurie avec haute moyenne et basse justice avec droit de chasse et pêche seulement dans toute l'étendue de la dite concession, suivant et conformément à celle qui leur en a été faite, sans que pour raison de ce ils soient tenus de payer a sa Majesté ni à ses Successeurs Rois aucune finance ni indemnité, desquelles à quelques sommes quelles puissent monter sa Majesté leur a fait don et remise; à la charge de porter foi et hommage au chateau de St. Louis de Quebec du quel le dit fief relevera et des autres redevances portées par la coutume de Paris suivie au dit pays, et que les appellations du juge qui y sera établi resortiront en la jurisdiction de Montreal à la charge aussi de conserver et faire conserver par leurs tenanciers les bois de chesne propres pour la construction des vaisseaux de sa Majesté, et de donner avis à sa Majesté on aux Gouverneur et Intendant du pays des mines, minières ou mineraux, si aucuns se trouvent dans la ditte concession, de la mettre en valeur et d'y faire tenir feu et lieu par leurs tenanciers, faute de quoi elle sera reunie au domaine de sa Majesté, de laisser libres les chemins nécessaires pour l'utilité publique, de laisser aussi les grèves libres à tous pêcheurs à l'exception de celles dont les dits Sieurs de Bonne et Repentigny auront besoin pour leur pêche, et en cas que dans la suite sa Majesté eût besoin d'aucune partie du dit terrain pour y faire construire des forts, batteries, places d'armes, magazins et autres ouvrages publics, elle pourra les prendre aussi bien que les arbres qui seront nécessaires pour les dits ouvrages publics et les bois de chauffage pour la garnison des dits forts, sans être tenue d'aucun dédommagement, voulant sa Majesté que la dite concession soit sujette aux conditions cy-dessus expliquées sans aucune exception sous prétexte qu'elles n'aurait pas été

stipulée dans la dite concession et pour témoignage de sa volonté, sa Majesté m'a ordonnè d'expedier le présent brevet qui sera enregistré au greffe du conseil Supérieur de Quebec et qu'elle a voulu signer de sa main et être contresigné par moi son conseiller Secretaire d'état et de ses commandements et finances.

(Signé) Louis.
(Signé) Bouille.

TRANSLATION.

"Brevet of Ratification of a Concession for Messrs. DeBonne and Repentigny.

"On this day, the twenty-fourth of June, seventeen hundred and fifty-one, the King being at Versailles, wishing to confirm and ratify a concession made the eighteenth day of October, one thousand seven hundred and fifty, by Sieurs the Marquis de la Jonquière, Lieutenant Governor General of New France, and Bigot Intendant of said country, to the Sieurs de Bonne, half-pay Captain in the Condè regiment of Infantry, and the Chevalier de Repentigny, an Ensign in the Canada troops, of the place called the Sault Ste Marie, with six leagues of front upon the Portage by six leagues in depth bordering the river which separates the two lakes, His Majesty has ratified and confirmed the said concession. He, in consequence, orders that the said Sieurs de Bonne and Repentigny, their heirs and assigns shall enjoy in perpetuity, as their own property, the said concession, as a fief and seigniory, with high, middle and low jurisdiction, with the right of hunting and fishing solely throughout the limits of said concession, according and in conformity to that which has been done for them; without their being bound, for this reason, to pay to his Majesty or the Kings, his successors, any sum of money therefor, or any indemnity; which sums of money or indemnities, to whatsoever sum they may amount, his Majesty has

made a gift of and released to them, on the condition that they shall bear fealty and homage to the castle of St. Louis of Quebec, of and from which the said fief shall be held, as well as the other services required by the Coutume de Paris followed in that country, and that the appeals from the Judge who shall be established there shall lie within the jurisdiction of Montreal; also, upon condition that they shall preserve and cause their tenants to preserve the oak timber proper for the construction of his Majesty's ships, and inform his Majesty or the Governor and Intendant of the country of the mines, minerals, and mineral resources, if any shall be found in said concession; that they improve said concession and use and occupy the same by their tenants in default thereof the same shall be reunited to his Majesty's domain: that they leave free the roads necessary for the public utility, leave also the shores free to all fishermen with the exception of those parts thereof which the said Sieurs de Bonne and Repentigny shall need for their own fishery; and, in case his Majesty shall hereafter need any part of said land in order to construct there any forts, batteries, arsenals, magazines and other public works, he may take also the trees which may be necessary for said public works, and firewood for the Garrison of such forts without being held to any indemnity; his Majesty ordering that the said concession shall be subject to the conditions above expressed, without any pretext that they should not have been stipulated in the said concession; and for a testimony of his will, his Majesty has ordered me to draw up this present decree (*brevet*) which is to be registered with the clerk of the Superior Council of Quebec, and which he has consented to sign with his own hand and ordered to be countersigned by me his Counsellor, Secretary of State and of his orders and finances.

(Signed,) LOUIS.
" BOUILLE.

C.

PRIVATE ACT.

CHAP XXXIV.—*An Act authorizing the Courts to adjudicate the Claim of the legal Representatives of the Sieur de Bonne and of the Chevalier de Repentigny to certain Land at the Sault Ste Marie, in the State of Michigan.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the legal representatives of the Sieur de Bonne and of the Chevalier de Repentigny be, and they are hereby, authorized to present their petition to the United States district court for the district of Michigan, setting forth the nature of their claim to certain land at the Sault Ste. Marie, in the State of Michigan, under an alleged grant, in seventeen hundred and fifty, from the governor and lieutenant-general and from the intendant-general of New France, now Canada, with evidence in support of their claim, stating the names, as near as may be, of all persons claiming adversely, and praying that the validity of the title may be inquired into and decided under the laws of nations, the laws, usages, and customs of the country from which the same was derived, and the treaties and laws of the United States; and the said court is hereby authorized to examine the same, and, in adjudicating the question of the validity of the title as against the United States, to be governed by the laws of nations and of the country from which the title was derived, and also by the principles, so far as they are applicable, which are recognized in the act of Congress approved the twenty-sixth of May eighteen hundred and twenty-four, "enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of the same;" and the district attorney is hereby directed to proceed in the interests of the United States in all things as required and directed by the aforesaid act of twenty-sixth May, eighteen hundred and twenty-four:

Provided, That suit shall be instituted by the claimants within two years from the passage of this act, and that an appeal may be taken, either by the claimants or the United States, to the Supreme Court of the United States within one year from the date of the rendition of the decree of the district court aforesaid.

SEC. 2. *And be it further enacted*, That in the case of a final decision under this act against the validity of the said claim, or in case of the failure of claimants to prosecute it within the period specified, the said claim shall be held forever barred, both in law and equity; but in the case of a final decree in favor of the validity of the grant, it shall not be construed to affect or in any way impair any adverse sales, claims, or other rights which have been recognized by the United States within the limits of the said claim, or which under any law of the United States may have heretofore been brought to the notice of the land commissioners or of the land officers in Michigan, or any of the land granted to the State of Michigan, or occupied by it for the Sault Ste. Marie canal, its tow-path and appurtenances, but for the area of any such adverse claims the legal representatives of the said De Bonne and Repentigny shall receive from the Commissioner of the General Land Office warrants authorizing them or their assigns to enter any other lands belonging to the United States, and subject to entry at private sale at one dollar and twenty-five cents per acre, which warrants shall be for sections or legal subdivisions of sections, at the option of the parties entitled to receive them.

APPROVED April 19, 1860.

D.

Extract from the fourth Article of the Definitive Treaty of Peace Concluded between France and England, February 10, 1763.

"His Britannic Majesty further agrees, that the French inhabitants or others who had been subjects of the most Christian King in Canada, may retire with all safety and freedom wherever they shall think proper, and may sell their estates, *provided it be to subjects of His Britannic Majesty*, and bring away their effects as well as their persons, without being restrained in their emigration under any pretence whatever, except that of debts or of criminal prosecutions; the term limited for this emigration shall be fixed to the space of eighteen months, to be computed from the day of the exchange of the ratifications of the present treaty.

(signed) Henry Stanbery
Attorney General

(signed) Alfred Russell
Special Counsel